

18 MARCH 1948

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Thursday, 18 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances.

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE B. V. A. ROLING,
Member from the Kingdom of the Netherlands, not sitting
from 1500 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI and UMEZU, who are represented by
5 counsel. The Sugamo Prison surgeon certifies that
6 they are ill and unable to attend the trial today.
7 The certificate will be recorded and filed.

8 Mr. Yamoka.

9 MR. YAMOKA: May it please the Tribunal,
10 I shall continue from page 112, paragraph 52:

11 52. On October 1, 1937, at a time when
12 fierce battles were raging over a large area of
13 China, the War, Navy and Foreign Ministers reached
14 a decision on the "Outline Regarding the Settlement
15 of the China Affair."¹²² That decision was approved
16 by KONOYE, the Premier. At the time the decision was
17 reached there was a strong feeling aroused among the
18 Japanese Army and other officials against China and
19 there was a general opinion that the previously
20 offered terms of peace to China were not suitable
21 for the situation then existing. The decision with
22 respect to terms on October 1, 1937 in outline re-
23 confirmed the plan adopted in early August 1937 and
24 merely added new proposals such as formal recognition
25 122. Ex. 3262, Tr. 29771.

1 of Manchukuo and reparations; in principle it stated
2 that "Japan aims at establishing a truly bright and
3 lasting friendship between Japan and China";¹²³ that
4 "in employing military and diplomatic measures and
5 other necessary steps involved in this operation,
6 utmost care should be exercised not to overstep the
7 limits fixed by international law" (General Provision
8 4); that North China should be under the control of
9 the Chinese Central Government (Criterion 3); that
10 "measures to be taken in regard to the rear operation
11 zones in North China will shake off the idea of its
12 being occupied enemy territory," and "no administra-
13 tion will be conducted in the occupied territory,"
14 and "the administrative organ will be left to inde-
15 pendent organization by the natives" (Criterion 5);
16 and that with regard to third powers "diplomatic
17 policies be executed so as not to brew a conflict
18 with them or invite their interference" (Criterion 7).
19 The October 1, 1937 decision, when read in its en-
20 tirety, shows that the Hopei-Chahar and Eastern Hopei
21 regimes were to be dissolved and that those areas
22 should be subject to free administration by the
23 Nanking Government; and otherwise there is nothing
24 contained anywhere in the decision which shows an
25 123. Ex. 3262, General Provision 1, Tr. 29772.

aggressive or even excessive attitude toward China.

1 The provision with respect to "recognition" of
2 Manchukuo did not reflect an unalterable decision
3 of the Government but was merely a statement of
4 what the Japanese would propose in the event a suit-
5 able opportunity for fundamental rapprochement in
6 Sino-Japanese relations arose. Of course, it goes
7 without saying that the whole decision was nothing
8 more than a statement of criteria in the event an
9 overall ultimate settlement of the relations between
10 the two countries which could have been and probably
11 would have been compromised had an opportunity for
12 peace discussion with China been presented. The
13 October 1, 1937 decision also contained statements
14 with respect to reparations, the formation of a
15 Sino-Japanese joint syndicate, etc., which were to
16 be taken up in any such final negotiations; however,
17 it must be noticed that all these criteria were
18 never actually presented to China since the oppor-
19 tunity never occurred. This decision therefore for
20 the most part remained in limbo as an unexecuted
21 statement of Japanese policy.
22

23 53. All through November 1937 there were
24 frequent discussions between the Foreign Minister and
25 the British, American and German Ambassadors, all of

whom were endeavoring to find some solution and settlement. Here it is also important to notice that HIROTA was apparently having his troubles in ascertaining the attitude and point of view of the Army with respect to settlement in China. For example, one uncontradicted piece of evidence shows that HIROTA did not get along very well with the Army and ascertained the Army point of view through the Navy Minister, and that the Army regarded the Foreign Minister as being "weak"; and that one influential member of the General Staff, KAGESA, had said that HIROTA should be "killed or apprehended" for having made known to the Chinese too soon the real attitude of Japan toward peace.¹²⁴

54. Because of the Army's point of view with respect to using Germany as intermediary, HIROTA was forced into the position that any effort on the part of either Britain or the United States to mediate a settlement would not bring about any satisfactory result. In that situation the Army proposed to request the good offices of Germany but the Foreign Minister was doubtful that the services of that country alone would be effective. At the beginning of December 1937 the German Ambassador
124. Ex. 3876, Tr. 38669.

1 formally offered to act as intermediary. When
2 Ambassador Craigie was informed of the German pro-
3 posal he called on HIROTA and expressed the opinion
4 that Germany alone would never be able to move
5 Chiang's mind and suggested that it would be more
6 desirable to have Britain and the United States
7 engage in joint efforts, and HIROTA, being of the
8 same opinion, replied that if there was no objection
9 on the part of Germany, Japan would wish Britain and
10 the United States to join. HIROTA, however, asked
11 Ambassador Craigie about sounding out directly the
12 intention of the German Ambassador. Having done
13 this Ambassador Craigie told HIROTA that the German
14 Government had an intention to act alone in the
15 matter because it was merely a tentative mediation.¹²⁵
16 In this situation nothing was left to HIROTA but to
17 accept German mediation alone. In connection with
18 the preference of the Army for German mediation, it
19 ought to be noticed that there is some evidence in
20 the record that the Supreme Command had been sounding
21 out the Chinese on settlement through Ott, the German
22 military attache, without consulting HIROTA about
23 that step.¹²⁶ If true, this activity on the part of
24 the Army affords another example of "double
25

125. Ex. 3260, Sec. 17, Tr. 29700.

126. Ex. 3788-A, Tr. 37709.

1 diplomacy" in Japan against which HIROTA always
2 raised his voice while he occupied high office.

3 55. Consider also that on November 16,
4 1937 HIROTA had a frank talk with Grew¹²⁷ and HIROTA
5 expressed full enthusiasm and sincerity for peace
6 negotiations through the efforts of third powers;
7 HIROTA stated that if peace could be brought about
8 at that time Japan would impose no unreasonable con-
9 ditions and would not keep a foot of Chinese terri-
10 tory, but that if the hostilities were protracted
11 and the casualties continued to increase, this mild
12 attitude of the Japanese Government might undergo
13 a change with the result that peace conditions might
14 become more severe; and that he (HIROTA) desired
15 that the United States would persuade Chiang Kai-shok
16 to open peace negotiations with Japan; he further
17 declared on that occasion that he was prepared to
18 send a representative to Shanghai to talk with a
19 representative of China. That conversation occurred
20 just about the time HIROTA learned that the Army
21 planned to drive on to Nanking and what HIROTA foresaw
22 and had in mind was that in the event the Chinese
23 Government withdrew from Nanking it would be that
24 much more difficult to continue peace negotiations.
25

127. Ex. 3284, Tr. 29956.

1 The fall of Nanking on December 13, 1937
2 changed the complexion of this whole affair in
3 Japan because the Japanese people and the Army in
4 general came to entertain an opinion that the Chiang
5 regime, which had lost the capital, was then reduced
6 to nothing more than a local regime. In that situa-
7 tion the Foreign Minister found it extraordinarily
8 difficult to foster peace negotiations on the previous
9 terms and he also faced strong opposition within the
10 Army and out about conducting future negotiations
11 with Chiang. It must be remembered that with the
12 fall of Nanking Japan had occupied a vast area within
13 China and had at least 200,000,000 Chinese back of
14 its front lines. Throughout December 1937 and up to
15 January 14, 1938, HIROTA conducted peace negotiations
16 through the good offices of Germany, but on a new
17 basis. New terms for peace were deliberated upon by
18 the authorities concerned; HIROTA desired that the
19 decision not go beyond the limits of the former plan
20 stated on October 1, 1937, despite the changed at-
21 mosphere prevailing in Japan after the fall of
22 Nanking; Home Minister SUETSUGU, who was newly per-
23 mitted to attend this liaison conference appeared
24 and expressed strong views with respect to the atti-
25 tude which should be taken by Japan toward China;

1 after much heated discussion, new terms were decided
2 upon,¹²⁸ which turned out to be somewhat stronger
3 than the previous terms, although HIROTA had been
4 talking to Ambassador Dirksen on the assumption that
5 the terms previously decided on October 1, 1937 would
6 be acceptable to all sides in the Japanese Government.

7 On December 24, 1937 the "Outline Regarding the
8 Settlement of the China Incident" was decided.¹²⁹

9 This Outline was drafted on the basis that "If the
10 Nanking Government will reconsider, we shall strive
11 with her to save the situation," but "to be prepared
12 for the time when the Government does not show the
13 slightest sign of reconsideration"; and that "Japan's
14 occupational area has become extensive, making it
15 necessary to immediately carry out its management."
16 Thus, the decision of December 24, 1937 had in view
17 the economic problems which confronted Japan within
18 the occupied area in China in the event a speedy
19 settlement could not be effectuated; and those deci-
20 sions were not reached with any idea of conquering
21 or dominating Chinese territory but for the purpose
22 of administering to the welfare of the people in
23 localities which were out of reach of Chiang's
24

25 128. Affidavit of HORINOUCI, par. 18, Ex. 3260,
Tr. 29701.

129. Ex. 3263, Tr. 29815.

1 Government and, consequently, were thrown into the
2 lap of the Japanese Army. For example, although the
3 decision set forth outlined plans to establish a new
4 regime in North China (paragraph 1), it contained
5 the following provision: "In case the negotiation
6 with the Central Government is concluded, this new
7 regime shall be adjusted according to the peace con-
8 ditions." The affidavit of HORINOUCHI, paragraphs
9 18-19,¹³⁰ and his testimony¹³¹ show that the peace
10 terms presented to Ambassador Dirksen consisted in
11 the main of four articles; that on December 22, 1937,
12 HIROTA offered them in the form of a memorandum to
13 the German Ambassador and in connection therewith
14 made a detailed oral explanation; and that on Decem-
15 ber 26, 1937 they were conveyed to the Chinese
16 Government at Hankow through Trautman, German
17 Ambassador to China. There is no evidence in the
18 decision with respect to those peace terms that the
19 General Staff made any request to modify them, which
20 seems to be the contention of the prosecution; even
21 if such an intention had been stated by some of the
22 members of the Army High Command, it must have been
23 after the terms had actually been agreed upon.¹³²
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25 130. Ex. 3260, Tr. 29682.

131. Tr. 29810.

132. Ex. 3265, Tr. 29855.

On the contrary, at the Cabinet conference on
1 December 17, 1937, War Minister SUGIYAMA, in reply
2 to a question from Education Minister KIDO, stated
3 that the Army had no intention of making further con-
4 cessions to China, that the terms were the minimum
5 terms, and in case China should refuse to accept them,
6 there would be no alternative but to continue mili-
7 tary action.¹³³ That position of the War Minister
8 was actually regarded as reflecting the opinion of
9 the entire Army. According to the testimony of KIDO,
10 the Home Minister SUETSUGU personally drafted the
11 peace terms expressed in the four general terms.¹³⁴
12 Moreover, it must be remembered here that even before
13 that decision there had been indignation within the
14 Army about the alleged "weak attitude" of HIROTA in
15 the negotiations through German mediation.¹³⁵
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23 133. Affidavit of KIDO, par. 79, Tr. 30835.

24 134. Affidavit of KIDO, par. 80, Tr. 30835.

25 135. Testimony of HORINOUCI, Tr. 29802;
Ex. 3876, Tr. 38671-73.

1 56. When the proposal for settlement was
2 made through the German Ambassador, Japan requested
3 China to reply by the end of December 1937. The reply
4 of China requested that Japan's terms be made more
5 clear. Accordingly, HIROTA orally had the German
6 Ambassador take down in great detail a full explanation
7 of the terms and these were communicated to China.
8 To this the Chinese authorities sent to Japan through
9 the German Ambassador a demand that the small details
10 be put in writing, but the Foreign Minister was not
11 in a position to comply. The decision of the Cabinet
12 was that HIROTA should explain orally to the German
13 Ambassador the details of the four simple terms which
14 themselves were in writing. Furthermore, as the Chinese
15 had never expressed any intention to have direct negotiations
16 with Japan for settlement, HIROTA, like all
17 prudent diplomats, was not willing to spell out things
18 to the last minute detail at that incipient stage in
19 the talks, and he knew that if all the minute details
20 were put in writing to the Chinese that the terms
21 would prove fixed in every respect and render the later
22 compromise all the more difficult. In the excitement
23 and tenseness of those days there was great apprehension
24 that the leakage of a Japanese proposal for settlement
25 might stir up a revolt among the extremists.

1 On January 13, 1938, the Chinese at last
2 sent a reply to Ambassador Trautman, which was trans-
3 mitted to Japan on January 14, 1938. That reply was
4 extraordinarily vague and merely contained another
5 demand for further detailed explanation regarding terms.
6 Exhibits 486-A-1¹³⁶ show the telegrams and reports
7 which were exchanged between Dirksen, Trautman and the
8 Foreign Office at Berlin with regard to Sino-Japanese
9 peace negotiations through the mediation of Germany.
10 As other related telegrams in this series could not
11 be found and no secondary evidence was available,
12 those documents are not complete and a few points are
13 left unclear. Those documents also contain views
14 based upon German misunderstanding, although they do
15 not deliberately distort Japan's real intention and the
16 actual situation at the time. The documents show,
17 however, that HIROTA urged the Chinese authorities to
18 hasten their reply on several occasions. For example,
19 one of the telegrams states that early in January 1938
20 "The Foreign Minister explained with great seriousness
21 and emphasis that the Japanese Government must now
22 insist upon a quick reply of the Chinese Government."
23 (Telegram dispatched from Tokyo to Berlin on January 5;
24 exhibit 486-D, paragraph 2; tr. 5,989) The telegram
25 136. Tr. 5975.

1 dated January 10, 1938, also shows that, having made
2 clear that the Japanese proposal was not an ultimatum,
3 the Foreign Minister did urge the necessity for a
4 prompt reply by the Chinese.¹³⁷ In the same telegram
5 the German Ambassador expressed his view on the Jap-
6 anese situation at that time as follows: "The pressure
7 of the Nationalist wing has increased to such an ex-
8 tent that the moderate wing will give in if a positive
9 answer of the Chinese Government does not arrive soon."
10 Surely that warning was communicated through German
11 channels to the Chinese Government. Nevertheless, the
12 Chinese reply, which came after a considerable lapse
13 of time since the original Japanese proposal of the
14 four terms and oral explanations with respect to it
15 had been furnished, merely requested further details,
16 which as previously stated had already been elaborately
17 and thoroughly explained to the Chinese by Trautman.
18 When HIROTA and other Cabinet members saw this last
19 vague attitude on the part of the Chinese, HIROTA
20 and others formed a settled opinion that the Chinese
21 had no sincere desire to open peace negotiations with
22 Japan. One piece of evidence says that HIROTA was
23 "angry" when he saw the last Chinese reply;¹³⁸ but if
24 he was angry he had ample justification, because he

137. Ex. 486-F (tr. 5993)
138. Ex. 486-C (tr. 5987)

had gone through a long period of travail ever since
1 September 1933 in his persistent efforts to bring
2 about a fundamental rapprochement in Sino-Japanese
3 relations on terms which were in no sense aggressive
4 and in no sense infringed upon the sovereignty and
5 territorial integrity of China. The evidence shows
6 that when Trautman was requested by China to communi-
7 cate her reply to Japan, he asked the Chinese Minister
8 emphatically "if this statement was not liable to be
9 considered evasive" and said that "it seemed to me that
10 the wish for an understanding does not find expression
11 in the statement."¹³⁹ The query remains as to whether
12 or not the Chinese Government made any serious study
13 of the proposal for peace. In this connection the
14 confidential report of the German Ambassador at Tokyo
15 to the Foreign Office in Berlin, dated January 26,
16 1938, shows that Chiang Kai-shek evaded discussion of
17 the Japanese terms with the German Ambassador to China
18 and did not indicate a desire to even make a study of
19 those terms seriously, although Germany had gone to
20 the trouble of transmitting the terms and the explana-
21 tion thereof;¹⁴⁰ that report also states: "It will
22 suffice rather to note that China has not seized the
23 second opportunity to begin peace negotiations offered
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139. Hankow telegram of Jan. 13, 1938, Ex. 486-B (tr. 5983)
140. Ex. 486-F (tr. 6001), Ex. 3789-A (tr. 37,723).

to her by Japan from the fact that Marshal Chiang Kai-shek evaded a definite discussion of the Japanese terms with Mr. Trautman and that the Chinese Ministerial Council has not occupied itself in an official session with the Japanese terms and explanations given to them by us. Until within the last few days, it was clearly evident that on the part of the Chinese there was no decision even merely to seriously examine the Japanese terms." The German Ambassador also assured Foreign Minister HIROTA, when he was informed of the Cabinet decision not to continue negotiations with Chiang Kai-shek, that "There is nothing more that could be done under the circumstances," and he proposed by his own initiative to explain it in detail to the other Ambassadors and Ministers. ¹⁴¹ At the time it was also clearly evident that, even before the fall of Nanking, Chiang Kai-shek had already gathered his generals and reached a decision on resistance up to the last against Japan.

57. On January 11, 1938, when the Chinese reply was still not forthcoming, an Imperial conference was held to decide the national policy toward China. A summary note on the consultation among the competent authorities of the ministries concerned leading up to 141. Ex. 3877 (tr. 38,675)

the opening of that conference is contained in exhibit
1 3265;¹⁴² but that note never came to the attention
2 of HIROTA. According to that exhibit an opinion had
3 been expressed among the General Staff that the Jap-
4 anese terms communicated to the German Ambassador in
5 December 1937 were too "aggressive"; but that opinion
6 having become known both the Foreign Ministry and the
7 Navy Ministry considered it highly favorable that the
8 army had come to hold such a broad view with respect
9 to settlement with China, and in these circumstances
10 the Imperial Conference was summoned. However, no one
11 could conclude from the attitude expressed by the Army
12 General Staff in January 1938 about withdrawal of
13 forces from China that the Foreign and Navy Ministers
14 had insisted upon firm terms for China from the begin-
15 ning of the affair. Whatever the cause, it still
16 remains that in January 1938 the General Staff changed
17 from a firm policy toward China to a moderate one, or
18 it might have been that a moderating policy of the
19 General Staff prevailed against a firm policy of the
20 War Ministry. However it originated, it is repeated,
21 that the Foreign Ministry welcomed the change in atti-
22 tude; and in those circumstances the Imperial Conference
23
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25 142. Tr. 29,855.

1 was held, as previously stated. The Imperial Conference
2 adopted the fundamental policy for disposition of the
3 China Affair, which, on the one hand, defined the
4 peace terms in case the Chiang regime would agree to
5 the opening of a peace parley, and on the other decided
6 alternatively on the general line of measures to be
7 adopted in case the Chiang regime did not show a dis-
8 position to discuss peace.

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1 The substance of the agreement reached during
2 the Imperial conference was almost the same in pur-
3 port as those contained in the "Outline Regarding
4 the Settlement of the China Affair" dated October 1,
5 1937,¹⁴³ the outline dated December 24, 1937,¹⁴⁴ and
6 the terms for fundamental rapprochement communicated
7 through the mediation of Germany. At the Imperial
8 conference it was fully understood that certain
9 phraseology used in previous outlines of policy was
10 so strong, reflecting nervous public opinion during
11 the changing course of events, that the real inten-
12 tion of the Japanese Government was liable to be
13 misunderstood; hence, the Foreign Minister and also
14 the Army welcomed the opportunity to decide the
15 fundamental policy toward China in an Imperial con-
16 ference. For instance, to take just one example,
17 the previous outlines of policy up until the time
18 of the Imperial conference never stated specifically
19 that the Japanese Government respected the integrity
20 of Chinese sovereignty and territory, although it
21 was implicitly involved in those outlines; and the
22 decision as a result of the Imperial conference
23 expressly stated that fundamental idea toward China
24

25 143. Exhibit 3262 (Tr. 29,771)

144. Exhibit 3263 (Tr. 29,815)

1 in the very preamble of the "Fundamental Policy for
2 Disposition of the China Affair."¹⁴⁵

3 Exhibit 3269,¹⁴⁶ although claimed to be a
4 record of the Foreign Office, bears no signature of
5 Foreign Minister, Vice-Minister or any other high
6 official of that Ministry. It refers to consultation
7 between the War Minister and the Army Commander in
8 China which took place before the Imperial Conference
9 of January 11, 1938. The substance has no bearing
10 upon HIROTA's policy or action. Moreover, it is a
11 record of hearsay information, coming from an un-
12 known source. Even the record itself is accompanied
13 by a written comment that its authenticity is un-
14 certain. In conclusion, this document is irrelevant
15 and immaterial to HIROTA's case.

16
17 58. Following the Imperial conference the
18 last Chinese reply through Germany arrived on
19 January 14, 1938. The reply was given long delibera-
20 tion for many hours at the liaison conference and
21 the cabinet meeting on January 14 and 15, 1937.
22 Those conferences having come to the reluctant con-
23 clusion that Chiang Kai-shek had not shown any sin-
24 cerity or good faith about the restoration of peace,

25 145. Tr. 29,844.

156. Tr. 37,245.

1 a decision issued that "the Japanese Government deals
2 no longer with Chiang Kai-shek." Those conferences
3 were, of course, not dealing merely with the last
4 evidence of Chinese vagueness and insincerity, but
5 had in mind that vast catalogue of discord between
6 Japan and China which had its roots long before the
7 Mukden Incident. It has already been stated in pre-
8 ceding paragraphs why Foreign Minister HIROTA con-
9 cluded from the last Chinese reply that China really
10 had no intention to enter into negotiations for peace
11 or even to accept the Japanese proposals as a start-
12 ing point and basis for discussion. HIROTA, having
13 carried on almost continuous conversations with the
14 Chinese and allied powers looking toward first a truce
15 and alternatively, but not necessarily, a fundamental
16 rapprochement ever since July 9, 1937, finally lost
17 his own temper and went along with the decision of
18 the Government not thereafter to deal with the Chiang
19 Kai-shek regime.

20 Exhibit 3736¹⁴⁷ is telegram No. 145783, dated
21 Hankow 15 January 1938, of Herr Trautmann, the German
22 Ambassador to China. Prosecution exhibit 486-B¹⁴⁸
23 contains exactly the same telegram, although that
24 part of the exhibit was not read when introduced.

25 147. Tr. 37,264

148. Tr. 5,983.

1 This telegram of the German Ambassador stated
2 that Kung of the Executive Yuan had requested him to
3 transmit to the Japanese Government his oral report,
4 expressive of his desire that he might be informed
5 of the nature and contents of the terms proposed by it.
6 Ambassador Trautmann also stated, in the said telegram,
7 his impression that "the Chinese Government might tone
8 down the defect of her answer by this statement."
9 That formal but defective answer of the Chinese
10 Government had been communicated to the German Ambassa-
11 dor on January 13 (Trautmann's telegrams 14578647; the
12 first part of exhibit 486-B), and, through the German
13 channel, to the Japanese Government on January 14
14 (exhibit 486-B). This official answer of the Chinese
15 Government became the subject of serious discussions
16 at the Japanese Cabinet conference, and the reply of
17 the Japanese Government thereto was conveyed by
18 Foreign Minister HIROTA to Herr Dirksen, the then
19 German Ambassador at Tokyo, at 10:30 A.M., January
20 16, 1938.
21

22 Such being the circumstances, the oral report
23 was made too late to exert any influence upon the
24 Japanese decision, even if it was worthwhile to be
25 taken into consideration. Moreover, we are not even
certain if this report was ever communicated to the

Japanese Government.

1 At any rate, if China's true intention was
2 just what was expressed in this report, we cannot
3 help wondering why they did not state it in the
4 preceding formal reply, and why they made the report
5 two days after the delivery of the said formal reply.
6 It was only natural that the Japanese Government
7 took the preceding reply at its face value, considered
8 that it reflected the true and formal intention of
9 the Chinese Government, and reached the above-
10 mentioned final decision after serious discussion.
11

12 The Japanese Government had repeatedly de-
13 manded a quick reply of the Chinese side, and the
14 Chinese reply of January 14 was the formal reply long
15 waited for. Bearing this in mind, it was only reason-
16 able that the Foreign Minister as well as other
17 Cabinet members regarded the reply to be expressive
18 of the true intention on the part of the Chinese
19 Government and decided their attitudes in accordance
20 with it. It is, therefore, utterly unreasonable to
21 accuse Japan, on the basis of this evidence, for mis-
22 understanding China's true intention.
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1 Here, again it must be remembered that Chiang
2 Kai-shek was a regime in China, that as far back as
3 1934 HIROTA had been deeply sympathetic with the
4 efforts of Chiang to unite China and establish law
5 and order,¹⁴⁹ and in those days he had no doubt
6 about the sincerity of Chiang in his relations with
7 Japan;¹⁵⁰ and that above all Japan by its early recog-
8 nition of Chiang as the Nationalist Government of
9 China had given his powerful and continuous support
10 in his effort to unify China under his banner. So
11 on January 14, 1938, Nanking having fallen, Chiang
12 being a local government in Hankow the Japanese
13 Government decided not to deal with him any longer;
14 among other things, this was merely a diplomatic
15 maneuver in an effort to restore peace which the
16 Japanese had been looking for all along on non-
17 aggressive terms. However, it was pointed out in the
18 testimony of HORINOUCHI¹⁵¹ that the aforementioned
19 declaration of the Cabinet did not mean the abandon-
20 ment of peace negotiations at all. The previous
21 negotiations carried on over a long period of time
22 while fierce fighting was raging having failed, the

24 149. Exhibit 3247 (Tr. 29,591)

150. Exhibit 3249 (Tr. 29,608)

25 151. Affidavit of HORINOUCHI, para. 20, Exhibit 3260
(Tr. 29,704)

1 Cabinet decided on a new approach in an effort to
2 work out peace. As HORINOUCI testified, even after
3 the above statement was issued, HIROTA never ceased
4 to seek an opportunity to realize peace, and the peace
5 which he aimed at and sought, as he expressly declared
6 in the Diet, was the unification of the whole of
7 China by the Chinese people, not regional separation
8 by the hand of the Japanese.¹⁵² The decision not
9 to deal with Chiang any longer was, of course, a
10 strategic maneuver in order to put an end to the
11 uncertain discussions which had been going on for
12 months and which apparently had been doomed to failure
13 because of the extraordinarily complicated circum-
14 stances from the very beginning. The non-dealing
15 statement of January 16, 1938 did not indicate any
16 intention whatever to shy away from fundamental peace
17 or to expedite any aggressive action on the part of
18 the armed forces. Unfortunately, the opportunity
19 which HIROTA earnestly desired might be forthcoming
20 in internal Chinese affairs did not transpire and
21 the situation advanced in the opposite direction.
22 Realizing the failure to accomplish the prime objective
23 which motivated him in accepting high office in Japan,
24 HIROTA expressed his desire in February 1928 to resign
25

152. Exhibit 3288 (Tr. 30,001)

1 and in fact he informed KONOYE, the Premier, of his
2 wish in the presence of the War and Navy Ministers
3 in a room of the Diet Building in February 1938.
4 Notwithstanding the decision not to deal with Chiang,
5 the situation was soon rectified because the evidence
6 shows that HIROTA was in touch with Chiang through
7 an emissary in the spring of 1938, and General UGAKI,
8 who succeeded him as Foreign Minister on May 26,
9 1938, accepted the Foreign Ministership only after a
10 previous understanding with Prince KONOYE that the
11 decision of January 16, 1938 would be reversed and
12 negotiations would be continued with Chiang. ¹⁵³ On
13 January 16, 1938, when the decision not to deal with
14 Chiang was reached, the situation was so complex
15 that one man's opinion was as good as another man's
16 as to what would be an effective step to restore
17 peace between Japan and China. The decision which
18 HIROTA concurred in was based upon an understanding
19 previously reached at an Imperial conference and
20 there is not the slightest evidence anywhere in the
21 record to show that either HIROTA or the other man
22 who participated in the decision of January 16, 1938
23 were moved by other than sincere motives for the
24 establishment of peace.
25

154

Exhibit 3270, entitled "Basic National Policy," is claimed to have been sent from the Premier, Prince KONOYE, to Foreign Minister HIROTA on January 21, 1938. It deals with various internal policies on the presumption that the China Affair would last for years to come. In the light of the fact that, at that time, Japan was virtually engaged in a large-scale conflict with China, the battle-front extending over a thousand miles, it is not to be wondered at that the Japanese Government intended to readjust its internal policies, to a certain extent, on a wartime footing. Furthermore, the measures enumerated in the present document are all abstract and vague, susceptible of varied interpretations. People are liable to form an opinion, in view of the series of events which followed the drafting of this exhibit, that the Japanese Government, at that time, had already decided to make preparations for the war which actually followed. But, scrupulous study of the then circumstances make it clear that it is not proper or just to come to such a hasty conclusion. Even though it turned out that this Basic National Policy was made the most of afterwards by the extremist elements, for the purpose of realizing and enforcing their own

154. Exhibit 3270 (Tr. 37,248)

1 views, if this document really emanated from the
2 Premier and was communicated to the Foreign Minister,
3 this does not necessarily imply that the latter had
4 anything to do with the formation or drafting of
5 this policy.

6 The policy is concerned chiefly with internal
7 and military measures, which are outside of the scope
8 of the Foreign Minister's competence. And the mere
9 fact that the document was communicated to the Foreign
10 Minister without any indication as to what effect
11 should be given thereto by the receiver, in no way
12 proves nor suggests the Foreign Minister's collabora-
13 tion in the making or carrying out of the measures
14 therein mentioned. In conclusion, this document
15 throws no light to HIROTA's case.
16

17 Had HIROTA been an aggressive person or a per-
18 son who was participating in a common plan or conspira-
19 cy to dominate or conquer China or any part of that
20 country, it is inconceivable that he would have gone
21 to the great length he did in an effort to work out
22 peace through literally hundreds of conversations
23 with the Chinese Ambassador, the Ambassadors of
24 foreign powers and the members of the Government and
25 Supreme Command. That he failed to attain peace was
certainly not for the lack of trying. It is repeated

1 once more by way of emphasis that during the whole
2 period from Marco Polo Bridge (July 7, 1937) up until
3 January 16, 1938, when the decision was reached to
4 stop dealing with Chiang, the Chinese never offered
5 a single idea or proposal for a settlement, and that
6 it persistently adopted a vague attitude although
7 the Japanese were going to extraordinary lengths to
8 convince the Chinese of good motive and intention
9 and the fact that Japan had no territorial designs,
10 respected the sovereignty of China and had only the
11 best interests and welfare of its respective peoples
12 at heart. What more could a mortal man do to effectuate
13 peace under those unprecedented conditions?
14 Surely nothing during the long course of the negotiations
15 even affords a suspicion that Mr. HIROTA was
16 engaged in any criminal purpose toward China or
17 the Chinese people. If HIROTA was an aggressor
18 at heart, he was indeed a strange person; he did not
19 wish to stay in office to witness the accomplishment
20 of an aggression. He sought to resign in February
21 1938, as previously stated, and would have actually
22 resigned at that time had it not been for the actual
23 tug in politics and the fact that there was a dearth
24 of men available at that time who were regarded as
25 having suitable background and experience to take

1 over the Foreign Ministry. Nevertheless, he resigned
2 on May 26, 1938, never again to return to any high
3 office in Japan and without the slightest ambition
4 in that direction.

5 SECTION 10

6 THE CHINA AFFAIR AND THIRD POWERS

7 59. During the China Affair there occurred a
8 series of unfortunate accidents which third powers,
9 principally Britain and the United States, claimed
10 did violence to foreign rights and interests in China.
11 Foreign Minister HIROTA received a number of protests
12 in this connection. While third powers filed a large
13 number of protests during the long course of the
14 China Affair, all of which are listed in the summation
15 of the prosecution, relatively few, aside from the
16 behavior of the troops in Nanking, were received
17 during the time HIROTA occupied the Foreign Ministry
18 (July 7, 1937 - May 1938). The uncontradicted evidence
19 shows that HIROTA took all precautions and means within
20 his power to prevent accidents and occurrences of the
21 kind protested by third powers. On the occasions when
22 decisions were reached by the Cabinet on major poli-
23 cies, he succeeded in having written into the policies
24
25

provisions directed toward scrupulous observance of
the rights and interests of third powers and their
nationals. For example, see exhibit 3262,¹⁵⁵ the
"Outline Regarding the Settlement of the China
Affair," (General Provision 4 and its Criterion 7);
and exhibit 3264,¹⁵⁶ "Fundamental Policy for
Disposition of the China Affair" (paragraphs 3 and 4).
Japanese diplomats in various parts of China were
frequently instructed by way of precaution or after-
math to take measures for the protection of foreign
life and interests even though foreigners, in some
instances, persisted in remaining and doing business
as usual in the path and line of fire of actual combat.
The behavior of the diplomats in Nanking was no
exception.¹⁵⁷ Notwithstanding these instructions,
which emanated from both the Foreign Minister and the
Supreme Command, incidents occurred, some accidental
and some disgraceful. As Mr. HIROTA assumes no
responsibility for what transpired in Japan after
he left the Foreign Office on May 26, 1938, this
part of the summation will be directed to complaints
received during the China Affair up to May 1938. It
is settled by the uncontradicted evidence that the

155. Tr. 29,771

156. Tr. 29,837.

157. Aff. of HIDAKA, para. 5, Ex. 2537, Tr. 21,450.

1 Foreign Minister had no power to direct or supervise
2 military action in the field or otherwise and all he
3 could do under any state of facts was to issue a
4 warning to the Supreme Command and then only through
5 the medium of the War or Navy Minister. During Mr.
6 HIROTA's occupancy of the Foreign Office in the China
7 Affair, the protests received arose out of acts and
8 omissions of the Army in the field in China which was
9 the primary responsibility of the commander in the
10 field and perhaps the ultimate responsibility of the
11 Supreme Command itself. None of the diplomatic
12 representatives of third powers in Tokyo, particularly
13 Ambassadors Grew and Craigie, ever doubted for a
14 single moment the sincerity with which Mr. HIROTA
15 went about the correction, warning, apology and
16 payment of indemnities for injuries and damages
17 inflicted. During Mr. HIROTA's occupancy of the
18 Foreign Office protests of third powers received
19 unprecedentedly prompt attention and satisfaction as
20 is clearly stated in the affidavit of Ambassador
21 Grew.¹⁵⁸ Sir Robert Craigie first came to Tokyo in
22 September 1937 and both he and Ambassador Grew remember
23 HIROTA very kindly to this day because of his attitude
24
25 158. Exhibit 3716 (Tr. 36,998)

1 and manner in disposing of complaints of third
 2 powers about conditions in China arising out of
 3 military activities and programs. Ambassador Craigie
 4 was confronted immediately upon his arrival in
 5 September 1937 with the incident in China involving
 6 the wounding of Ambassador Hugessen, which was
 7 promptly settled through the efforts of Mr. HIROTA
 8 to the satisfaction of the British Government with
 9 the expression by HIROTA, among other things, of
 10 profuse apology; and Britain notified Japan that
 11 the incident was regarded as closed.¹⁵⁹ The bombing
 12 and sinking of the Panay and injury to vessels of the
 13 Standard Oil Company were satisfactorily settled
 14 without delay by the prompt payment of indemnities
 15 and profuse apology by HIROTA.¹⁶⁰ In the case of the
 16 Panay, HIROTA took the unprecedented step of immediate-
 17 ly calling upon Ambassador Grew at the Embassy, which
 18 he regarded as a display of great moral courage during
 19 a time when nationalist sentiments were on the upgrade.
 20 The shelling of the Ladybird and other ships were
 21 treated in the same way; that is to say by an
 22 immediate and profuse apology followed by prompt pay-
 23 ment of full indemnity and the closing of the matter
 24

25 159. Ex. 2519 (Tr. 21,337); Ex. 2520 (Tr. 21,340);
 160. Ex. 2522 (Tr. 21,350); Ex. 3716 (Tr. 36,998);
 Ex. 3285 (Tr. 29,963); Ex. 3716C (Tr. 37,009);
 Ex. 2523 (Tr. 21,353); Ex. 2524 (Tr. 21,358); and
 Ex. 2525 (Tr. 21,360).

161
 to the satisfaction of Britain. Thus, incidents
 1 which had the potentiality during days of emotion
 2 to exacerbate good relations between Japan and the
 3 United States and Britain were promptly settled to
 4 the satisfaction of those Governments. It is the
 5 contention of the accused that matters finally
 6 settled in accordance with normal diplomatic pro-
 7 cedure are not subject to re-examination. In other
 8 cases involving violence against life and foreign
 9 property, the Japanese Government showed constant
 10 readiness in taking remedial measures, payment of
 11 indemnity, etc.
 12 162

13 60. HIROTA took similar precautionary and
 14 warning action about protests involving indiscriminate
 15 air raids in China; but the fact that it was beyond
 16 his power as Foreign Minister to exercise any real
 17 control is graphically illustrated by an entry in
 18 Grew's diary of September 20, 1937, 163 which reads
 19 as follows: "While recent developments indicate that
 20 HIROTA has made and is making efforts to avoid antagon-
 21 izing the United States by cautioning the military
 22 and naval forces in individual local issues, we must

- 24 161. Ex. 2527 (Tr. 21,367); Ex. 2528 (Tr. 21,371);
 25 Ex. 3286 (Tr. 29,967); and Ex. 3717 (Tr. 37,016).
 162. Ex. 3282 (Tr. 29,949); Ex. 2531 (Tr. 21,390).
 163. Ex. 3282 (Tr. 29,949).

1 reluctantly face the fact that the civil government
2 in Tokyo has very little influence with these forces
3 where their general objectives are concerned." In
4 the same entry, the Ambassador commented that when
5 he gave a warning bluntly denouncing the Japanese
6 Army's action and stated that "the good will between
7 our countries which he and I had been building up
8 during these past years was rapidly dissolving as
9 a result of Japan's action in China," the Foreign
10 Minister received the Ambassador's observation sadly
11 and more gravely than usual without the least pre-
12 tense at defense. The Grew diary for the same date
13 (September 20, 1937)¹⁶⁴ shows that upon receiving a
14 United States protest against indiscriminate bombing,
15 HIROTA assured Grew that he would bring the matter
16 to the attention of the "highest quarters" and
17 immediately thereafter went to the Palace in that
18 connection.

19 In his interview with Ambassador Grew on
20 November 16, 1937, HIROTA expressed his deep concern
21 with the anti-British and anti-American trend in
22 Japanese journalism and he exerted himself to change
23 the tone of the press in order to maintain good
24 164. Exhibit 3281 (Tr. 29,948)
25

1 relations with third powers although this involved an
2 unusual undertaking on the part of a Foreign Minister. ¹⁶⁵

3 61. During all of the time HIROTA held high
4 office he respected the terms of the outstanding
5 treaties and conventions; he never granted any
6 preferential economic privileges to either Germany
7 or Italy; he did not favor infringing the right of
8 Britain, the United States or any other power to do
9 business in China, Manchukuo or Japan, and at all
10 times respected the principle of the "Open Door" and
11 "Equal Opportunity," notwithstanding that China for
12 more than a decade had consistently sought to oust
13 all extraterritorial rights and privileges, annually
14 conducted a day of "national mourning" over its
15 alleged "last rights," etc. In this connection the
16 Tribunal will recall that in the Nine-Power Pact
17 of 1922 China gave only limited consent to its pro-
18 visions and did not agree to that portion of the
19 Pact which in the main has been the subject of the
20 prosecution's argument. The prosecution took an
21 excerpt from the Business Report of the Foreign
22 Office ¹⁶⁶ with respect to German and Italian invest-
23 ments in China, but this was no help to the prosecution
24
25 165. Ex. 3284 (Tr. 29,956); Ex. 3716 (Tr. 36,998)
166. Ex. 2228A (Tr. 15,982).

1 in establishing an alleged preference; that document
 2 stated that it was not intended to give to either
 3 Germany or Italy "the preference which would threaten
 4 to cut off entirely the economic participation of
 5 Britain and the United States"; and the latter part
 6 of that document contains nothing more than suggest-
 7 ions concerning the way of handling diplomatic
 8 negotiations with Germany. Moreover, the uncontra-
 9 dicted evidence shows that neither Germany nor Italy
 10 was ever given during HIROTA's days any preference
 11 of any kind; and to put this matter beyond the pale
 12 of doubt it need only be pointed out that the prose-
 13 cution itself proved that Germany had made diplomatic
 14 protests to Japan against Japanese interference with
 15 German trade and interests in China.¹⁶⁷

17 62. The Behavior of the Army at Nanking.
 18 In December 1937 and January 1938 the Foreign Ministry
 19 received a large number of complaints, in two lots
 20 with respect to alleged atrocities committed by the
 21 Japanese Army in Nanking.¹⁶⁸ Of course, the Foreign
 22 Office had nothing to do with the commission of the
 23 alleged atrocities and received the protests after
 24 167. Ex. 592 (Tr. 6,588); Ex. 594 (Tr. 6,597);
 25 Ex. 595 (Tr. 6,603).
 168. Ex. 3287 (Tr. 29,969), testimony of ISHII
 (Tr. 29,974 et seq.)

1 the incidents in the main had already taken place.
2 The measures taken by the diplomatic authorities
3 on the spot were fully explained in the testimony
4 of HIDA¹⁶⁹KA. The Foreign Office accepted the com-
5 plaints at "face value" and, under the order of
6 HIROTA, took immediate steps to file an emphatic
7 protest to the competent Bureau of the War Ministry;
8 it referred those complaints also to the liaison
9 conference between the War and Navy Ministries and
10 the Foreign Office with the result that the military
11 authorities were asked to and agreed to take strict
12 measures to control the behavior of the Army and
13 make appropriate investigations. Moreover, HIROTA
14 gave direct warnings to War Minister SUGIYAMA.¹⁷⁰
15 This procedure was repeatedly taken by the Foreign
16 Office and there is not a line of evidence anywhere
17 in the record to show that the Foreign Office was
18 dilatory or negligent in that regard. Especially, in
19 view of the fact that HIROTA had striven for many
20 years during trying periods to maintain and promote
21 good relations with all third powers, no one could
22 have been more deeply distressed than HIROTA was to
23 hear those complaints about the behavior of the troops
24

25 169. Exhibit 2537 (Tr. 21,444)
170. Exhibit 3287 (Tr. 29,969)

1 in Nanking. Although all the evidence in the record
2 with respect to what the troops actually did in
3 Nanking points to the conclusion that the protests
4 were exaggerated and out of all proportion, still
5 this is all a matter of hindsight; and it is
6 abundantly clear that at the time the Foreign
7 Ministry received those protests it had no substan-
8 tial information one way or the other as to whether
9 they were true, partially true or false. As previ-
10 ously stated, the Foreign Ministry proceeded on the
11 assumption they were true and the temper and activity
12 displayed by HIROTA upon receiving those complaints
13 all point to the fact that he thought there was con-
14 siderable substance to the protests and that this
15 threat to the maintenance of good relations had to
16 be removed at all costs.¹⁷¹

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25 171. Testimony of ISHII, Ex. 3287 (Tr. 29,969-97).

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1 As previously stated, the Foreign Office was
2 assured that the War Ministry would not demur about
3 taking action on the representations of the Foreign
4 Minister; and as a result of other representations,
5 the Supreme Command in January 1938 dispatched Major-
6 General HOMMA, then Director of a bureau of the
7 General Staff, to the spot in order to make an investi-
8 gation and see to the strict enforcement of military
9 discipline. The fact that HOMMA was in Nanking early
10 in February 1938 for that purpose appears from the
11 affidavit of HIDAKA¹⁷². A telegram dispatched from¹⁷³
12 the American Embassy in Tokyo to the State Department
13 also confirms the fact that the Foreign Office had
14 actually taken steps in order to stop the alleged
15 atrocities and interference with the property of
16 third powers and their nationals. Granting that the
17 alleged atrocities continued over a period of several
18 weeks, and granting further that the warnings issued
19 by the Army to the expeditionary forces were not
20 sufficiently strong and effective, it furnishes no
21 reason to lay that responsibility at the door of HIROTA.
22 As previously stated, he moved promptly and repeatedly
23 upon receipt of those complaints and did all that any
24
25 (172. Ex. 2537, Tr. 21,444.
173. Ex. 328, pp. 23024 (Tr. 29,998 et seq.)

1 Foreign Minister could do under the circumstances
2 under the Constitution of Japan. HIROTA had no
3 power to give orders to the Army; he had no power
4 to punish responsible officers in the Army; and all he
5 could do under the circumstances was to issue prompt
6 and emphatic warning to the War Ministry which he
7 did. As testified to by ISHII¹⁷⁴, HIROTA and the
8 Foreign Ministry did everything it had the power to
9 do in the circumstances.

10 63. The prosecution has suggested that
11 HIROTA should have referred the complaints to the
12 Cabinet, but that suggestion is bootless. The Cabinet
13 itself could not have done more than HIROTA had already
14 done and complaints of that kind were not of such a
15 nature that HIROTA could not take effective steps
16 without a Cabinet order. The uncontradicted evidence
17 is that HIROTA personally protested to the War Minister.
18 Consequently, there is nothing in the entire evidence
19 to support Count 45, which deals with the Nanking
20 situation, against HIROTA. The case of Canton
21 mentioned in Count 46, and that of Hankow mentioned
22 in Count 47, all occurred when HIROTA held no official
23 post whatever; and of course, he had no connection
24 with those events.
25

(174. Tr. 29,997)

1 64. Narcotics. Hirota had nothing whatever
2 to do with any alleged policy of weakening the Chinese
3 will to resistance by means of traffic in narcotics,
4 which is mentioned in Section 6, Appendix A, of the
5 Indictment. In the summation of the prosecution, they
6 claim that HIROTA participated in the alleged opium
7 monopoly (Chapter IX; FF-105-108). This extraordinary
8 argument is not based on any evidence. Two Cabinet
9 decisions are cited (FF-106) which were taken, respec-
10 tively, in April 1933 and December 1938. It is ob-
11 vious that HIROTA at those times was not a member of
12 the Cabinet and he had nothing to do with those decisions
13 even assuming for the sake of argument that the decisions
14 are subject to criticism. With regard to the prosecu-
15 tion's submission that "The clear Japanese policy of
16 encouraging the growth and the use of narcotics in all
17 parts of Japanese occupied China," we can only say
18 that there is not a jot of evidence in the case to show
19 that HIROTA or the Foreign Office under his direction
20 participated in such a policy or had any knowledge
21 whatever of any such activity. The prosecution re-
22 ferred to the testimony of three witnesses in its
23 summation, but none of them said anything which even
24 faintly intimates that HIROTA had any connection with
25 the matter. For example the witness Lawless testified

1 with respect to the control of illicit traffic,
2 chiefly at Peiping, but he referred to the period
3 after July 1938; that is to say after HIROTA's resig-
4 nation for the last time as Foreign Minister in
5 May 1938. The witness Gill, one of the three wit-
6 nesses referred to, testified with respect to the
7 traffic in the Shanghai district but he said he always
8 received helpful cooperation from the Japanese Consul-
9 ate ¹⁷⁵ in suppression activities. It was, of course,
10 well known to the Japanese that millions of Chinese
11 have been addicted to the use of opium and other nar-
12 cotics for many generations, that Chiang Kai-shek had
13 obtained the enactment of drastic laws against dealers
14 and users; but in view of the ugly nature of the habit
15 it is hardly to be supposed that laws substantially
16 cut down the number of addicts or accomplished any-
17 thing more than driving the traffic further underground.
18 It having been demonstrated to the Tribunal through
19 hundreds of pieces of evidence that HIROTA is a man
20 of sterling character, and of high and lofty ideals,
21 it must be abundantly clear that he never had any
22 part in either an affirmative or negative way in any
23 alleged policy to increase the growth and use of opium
24 and other narcotics during his tenure of office or at
25 (175. Tr. 4,413 et seq.)

any other time.

1 65. The enlargement of the China Affair was
2 not due to any action taken by HIROTA. The Army
3 exercising its autonomous jurisdiction made inde-
4 pendent decisions in that regard. See the evidence
5 of TOJO¹⁷⁶ wherein he said that the Chief of the
6 General Staff was on an equal footing with the War
7 Minister and not under his command; and the former's
8 views were transmitted to the Cabinet through the War
9 Minister. In addition TOJO referred to the China
10 Affair as follows¹⁷⁷ : "At first, the Government policy
11 in regard to the China Incident was that of localiza-
12 tion. However, due to the fact of the independence
13 of the High Command, the fighting kept spreading as
14 they strove for victory. Premier KONOYE had a terrible
15 time;" and further "The Government policy was a policy
16 of non-enlargement of the Incident; nevertheless,
17 because of the fact that the Civil Government had no
18 authority over the Supreme Command, the fighting was
19 in fact enlarged and the Civil Government was power-
20 less to prevent it."
21

22 66. In that situation the Japanese Govern-
23 ment, like all other governments engaged in modern
24

25 (176. Ex. 3032, Tr. 27,082.
 177. Ex. 3033, Tr. 27,085).

warfare, was compelled to agree upon various administrative and economic steps and principles in order to deal with the new situation, provide for the welfare of the Chinese inhabitants within their lines as well as the security of the occupation itself. These several measures taken during HIROTA's tenure were exceedingly mild, were plainly stated to be temporary measures growing out of the exigency of warfare and in no sense implied an effort to conquer or dominate China or that part of it within Japanese lines. Additionally, all the few and simple economic expedients adopted by the Cabinet to meet the realities of warfare were all expressly stated to be subject to readjustment when peace was attained. None of the administrative steps taken during HIROTA's days were aimed at encroaching on the sovereignty of China or exploitation in any sense. The Army had sole administration of the occupied territory. However, in order to coordinate and rationalize administrative policies and to prevent the abuse of administrative powers in the occupied territory, principles based on the actual needs and realities were agreed upon as a result of consultation between the Army and the civil side of the Government.

67. There is therefore no substantial

1 evidence to support Count 28; nor evidence to hold
2 HIROTA responsible for the activities of the Army at
3 Nanking; and he of course was not connected in anywise
4 with the treatment of prisoners of war or internees.
5 Consequently, Counts 45, 46, 47, 53, 54 and 55 also
6 fail.

SECTION 11HIROTA AS THE PRESIDENT OF THE BUREAU OF PLANNING:AND THE FIVE YEAR PLAN

68. HIROTA, as Foreign Minister of the First KONOYE Cabinet, held concurrently, from June 1937 to October 1937 the presidency of the "Bureau of Planning" ("Kikakucho")^{177a} which, as is explained in the UEMURA¹⁷⁸ affidavit was different from and of smaller competence than the "Planning Board" ("Kikakuin"), which was set up at a later date. As was explained by the witness¹⁷⁹ INO, the "Planning Bureau" was, during the time HIROTA was its President, chiefly concerned with the establishment of the Ministry of Welfare which dealt with innocuous matters like sanitation, welfare, etc. HIROTA seldom ever attended the meetings and merely affixed his signature to routine documents of the Bureau when they came to the Cabinet and left practically all other business in charge of the Deputy Chief of the Bureau. It is perfectly obvious that the "Planning Bureau" had no connection with the formulation of any policies or plans which have any relation whatever to the allegations of the Indictment; and as

(177a. In the original Japanese text of Ex. 108, T.706, the term Kikakucho is used.)
(178. Ex. 2802, T. 25,198)
(179. Ex. 3259, T. 29,658)

1 we read the summation of the prosecution it seems
 2 that they have changed their first thought about the
 3 function and competence of the Bureau of Planning.¹⁸⁰

4 69. The prosecution cited exhibit 2227¹⁸⁰
 5 in their charge that HIROTA, as President of the
 6 Bureau of Planning, participated in the "Five Year
 7 Plan" relating to military preparation; but, according¹⁸¹
 8 to the testimony of the witness Kikusaburo OKADA
 9 the "outline of the five year plan for the manufactur-¹⁸²
 10 ing and munition industries of the War Ministry" had
 11 no connection with the Civil Government and that ex-¹⁸³
 12 hibit 2227, supra, was not an excerpt of that alleged
 13 plan. Instead, exhibit 2227 was an excerpt of the¹⁸⁴
 14 "Five Year Plan for Important Industries" and that
 15 this latter plan was first adopted by the Cabinet
 16 meeting on January 17, 1939; that is to say, seven
 17 months after HIROTA's resignation from his last of-¹⁸⁵
 18 ficial position. Furthermore, although exhibit 2227
 19 purports to have been submitted by AKIYAMA to HIROTA,
 20 it was not signed by HIROTA and otherwise it does not
 21 contain any evidence that it had ever been actually
 22 seen by him. It certainly is no evidence that HIROTA
 23

24 (180. T. 15,980)

25 (181. T. 18,271 et seq.)

(182. Ex. 841, T. 8,261)

(183. T. 18,273, 18,283, and 18,325)

(184. Ex. 842, T. 8,264, 18,327)

(185. T. 18,318)

1 participated in or approved any such plan. That
2 document is wholly ambiguous.

3 SECTION 12

4 THE TRIPARTITE PACT

5 70. The Tripartite Pact was concluded between
6 Japan, Germany and Italy in September 1940 after brief
7 negotiations between Foreign Minister MATSUOKA and
8 Stahmer. HIROTA held no government post at that time
9 and had been out of office ever since May 1938; there
10 is no evidence that as a private citizen he said or
11 did anything to favor the conclusion of that pact.
12 It is hardly worthwhile at this state in the argument
13 in emphasizing that there was not the slightest con-
14 nection between the Tripartite Pact and the Anti-
15 Comintern Pact.

16 It is true that prior to the actual signing
17 of the Tripartite Pact, fruitless negotiations had
18 been carried on for the conclusion of an alliance
19 between Japan and Germany under what has been since
20 called "strengthening of the anti-comintern" but as
21 is shown by the uncontradicted evidence those conversa-
22 tions took place after HIROTA retired from public office.

23 71. It has been shown by uncontradicted evi-
24 dence that HIROTA was strongly opposed to an alliance
25 between Japan and Germany. ARITA testified that in

1 March 1940 he recommended HIROTA as State Councillor
 2 in the YONAI Cabinet because he was well aware of
 3 HIROTA's firm stand against the conclusion of the ¹⁸⁶
 4 Tripartite Pact or a military alliance with Germany.
 5 Further, ARITA testified that HIROTA told him that he
 6 (HIROTA) could not but be anxious about the result
 7 which would be brought about by the conclusion of a
 8 Tripartite Pact, pointing out the danger that it
 9 might stiffen the attitude of the United States and
 10 Britain toward Japan which in turn would prove a fatal
 11 obstacle to the settlement of the China Affair, and
 12 additionally that it might also exert an evil influence
 13 on Soviet-Japanese relations. ¹⁸⁷ Admiral YONAI also
 14 testified that while he was Premier in 1940, at an
 15 interview exclusively between him and HIROTA, HIROTA
 16 declared that the safer course for Japanese diplomacy
 17 was to act in concert with Britain and the United
 18 States, and that the alliance with Germany and Italy
 19 would be most undesirable as it meant the danger of
 20 ¹⁸⁸
 21 involving Japan in the European war.

22 72. Mr. Romer, long the Polish Ambassador to
 23 Japan, in his affidavit quoting excerpts from his diary
 24 made at the time (entry for January 21, 1941), testified
 25 (186. Ex. 3290, T. 30,004)
 (187. Ex. 3290, T. 30,004)
 (188. Ex. 3291, T. 30,017)

that HIROTA personally told him that he judged the
1 policy pursued by Foreign Minister MATSUOKA with the
2 utmost severity and that MATSUOKA was following a pol-
3 icy likely to involve Japan in war with the United
4 States which would be "fatal to Japan." ¹⁸⁹ The diary of
5 Ambassador Grew (entry for February 1, 1941), which
6 was supported by his affidavit tendered to the Tribunal,
7 shows that Grew was informed at the time of HIROTA's
8 view about MATSUOKA pursuing a policy "fatal to Japan." ¹⁹⁰
9 Although HIROTA was merely a private citizen at the
10 time the Tripartite Pact was concluded and had no
11 power to control the situation one way or the other,
12 it does show that he was lending his influence as
13 a private citizen to make known at home and to the
14 representatives of foreign countries his opposition
15 to the policy pursued by MATSUOKA. HIROTA was opposed
16 to the Tripartite Pact from first to last, foresaw
17 the train of travail that it was likely to and did
18 bring to Japan and he always regretted its conclusion.
19 Moreover, everything that HIROTA ever said or did
20 during the time he held high office shows that he was
21 not engaged in any common plan or conspiracy with Ger-
22 many or Italy. Therefore, there is no substance to
23 Count 5.
24

25 (189. Ex. 3293, T. 30,028)
(190. Ex. 3294, T. 30,036)

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1100, after which the proceedings were resumed as follows:)

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Yamaoka.

MR. YAMAOKA: May it please the Tribunal.

Continuing:

SECTION 13. HIROTA'S ACTIONS AFTER HE LEFT OFFICE.

73. The prosecution has contended on the basis of an entry from the HARADA-SAIONJI Memoirs of August 12, 1939¹⁹¹ that "KONOYE had interviewed him (HIROTA) and found his opinions very similar to those of the army" and to that ambiguous statement the prosecution contends out of thin air that it meant that HIROTA entertained ideas similar to those of the army with respect to a military alliance with Germany. Of course, there is nothing in that piece of evidence which suggests anything of the kind. Exhibit 3807-A¹⁹² cited by the prosecution in support of these contentions consists of an

191. Pros. Sum., para. FF-109.

192. Tr. 37,846.

excerpt from the HARADA-SAIONJI Memoirs which refers
 1 to the Five Ministers' Conference of August 8, 1939
 2 in which there is no reference or mention of HIROTA
 3 whatsoever. It is hardly necessary to repeat that at
 4 that time HIROTA had already retired from public office
 5 and had nothing to do with that conference. Moreover,
 6 any such construction is inconsistent with a large
 7 volume of other evidence, such as, for example, the
 8 testimony of ARITA that HIROTA was opposed in 1939
 9 and 1940 to a military alliance with Germany.¹⁹³ The
 10 truth of the matter is that when HIROTA was offered the
 11 Premiership in 1939, he declined, saying that he was
 12 "worried about the attitude of the army," which at that
 13 time was engaged in a campaign of "ostracism" and "an
 14 expulsion movement" against him.¹⁹⁴ The prosecution
 15 contention, therefore, is specious, misleading and
 16 absolutely contrary to fact. The prosecution also
 17 erroneously says¹⁹⁵ that HIROTA "withdrew his candidacy
 18 on a report by HARADA of army opposition, in spite of
 19 or in ignorance of those views"; and they cited as the
 20 sole authority for that wild statement exhibit 3878.¹⁹⁶

21 As previously stated this piece of evidence shows beyond
 22 doubt that HIROTA never sought the Premiership in 1939,
 23

24 193. Ex. 3290 (Tr. 30,004).

25 194. Ex. 3878 (Tr. 38,677).

195. Pros. Sum. para. FF-109.

196. Tr. 38,677.

that others had agreed that he was the number one
1 "candidate"; but the word "candidate" in that context
2 simply meant that others had agreed among themselves
3 that HIROTA was a leading figure for appointment at
4 that time. In this connection also consider that, as
5 is shown by the same document, General UGAKI, an
6 acknowledged and well-known pacifist, had been
7 selected by others as the second choice candidate for
8 the Premiership. Otherwise expressed, the uncontra-
9 dicted evidence shows that on that occasion the Lord
10 Keeper of the Privy Seal and others had agreed among
11 themselves that the two leading "candidates" were
12 HIROTA and General UGAKI, both of whom were liberals
13 and men of pacific intention. As HIROTA was not
14 willing in 1939 to go along with the army and the trend
15 of the time but instead the army had started a movement
16 to ostracize and expel him no better or more powerful
17 demonstration can be given that he was not engaged in
18 any "common plan or conspiracy" with the army or any
19 faction within or without the government.

21 SECTION 14. HIROTA AS A SENIOR STATESMAN.

22 74. The prosecution has attempted to involve
23 HIROTA in the Pacific War because he attended certain
24 meetings called "senior statesmen conferences." The
25 argument of the prosecution is very sketchy and

197
 1 incomplete. The prosecution does not support its
 2 contention that HIROTA has a responsibility for the
 3 commencement and continuance of the Pacific War. On
 4 the contrary all the evidence shows that HIROTA was
 5 opposed to the commencement of the Pacific War and
 6 during its continuance did what was within his power
 7 to contribute to the end of it. Even the prosecution
 8 admits that at the last meeting of the senior statesmen
 9 before the commencement of the Pacific War (November 29,
 10 1941) the senior statesmen present, including HIROTA,
 11 expressed opposition and "dissuading" opinions. ¹⁹⁸ As
 12 the prosecution's summation with respect to Mr. HIROTA's
 13 activities as a senior statesman is so misleading and
 14 incomplete it has become necessary for the defense to
 15 give an extended account of his activities in that
 16 respect, all of which is fully shown in the evidence.
 17

18 75. "Senior statesmen" was an honorific title
 19 popularly given to persons who had previously served
 20 as Premier; it was not an official title; neither was
 21 the senior statesmen's conference a state organ with
 22 any power to decide government policies either from a
 23 legal or a practical standpoint; those conferences used
 24 to be called on the initiative of the Lord Keeper of
 25
 197. Pros. sum. pp. FF-64-65-65-A; paras. FF-111-113.
 198. Ex. 1196 (Tr. 10,452).

the Privy Seal or others and not on any occasion on the initiative or wish of the senior statesmen themselves. This is borne out, among other pieces of evidence, by the affidavit of TOJO, paragraph 110, ¹⁹⁹ where it is made clear that the so-called senior statesmen's conference was not a "conference" in any proper sense of the term. It was simply an informal gathering without a chairman and without resort to a voting procedure. Furthermore, the senior statesmen of those days should be distinguished sharply from the elder statesmen or "genros" of the MEIJI Era; genros of that day were favored with special Imperial messages which conferred upon them marked distinctions as meritorious elder statesmen, and they were responsible to a certain extent for shaping national policies in those days, and were in a position to participate in state affairs at the highest level. The senior statesmen of recent times were sometimes summoned to the palace only as former ²⁰⁰ Premiers, having no substantial competence. Statements made by senior statesmen in those meetings therefore had no binding power on the government; and the government was entirely free to consider or ignore the views expressed by those men. The latter statement

199. Ex. 3655 (Tr. 36,364).
200. Tr. 36,365.

1 is made manifest when it is considered that the govern-
2 ment rejected the "dissuading" opinions expressed by
3 all the elder statesmen on November 29, 1941.

4 The prosecution pointed to two excerpts from
5 the KIDO diary, exhibit 1154,²⁰¹ dealing with the con-
6 ference of October 17, 1941, and exhibit 1196,²⁰² deal-
7 ing with the conference of November 29, 1941. Those
8 diary entries, however, instead of corroborating the
9 thin contention of the prosecution, furnish strong
10 evidence for HIROTA. According to exhibit 1154, KIDO
11 proposed at the very beginning of the senior statesmen's
12 conference of October 17, 1941 that War Minister TOJO
13 was a suitable person to receive the Imperial command
14 to form a cabinet because it was necessary to re-examine
15 the Imperial conference decision of September 6, 1941;
16 and that no senior statesman present, including HIROTA,
17 opposed that suggestion. It is true that HIROTA did
18 not oppose the suggestion of KIDO with respect to the
19 suitability of TOJO, in the circumstances of those
20 days; but he consented, notwithstanding the fact that
21 he was not even acquainted with TOJO, because he
22 trusted the soundness of the suggestion made by KIDO,
23 upon whom he relied for a correct judgment of the
24

25 201. Tr. 10,291.

202. Tr. 10,452.

situation then existing. The view of the advisor to
1 the Throne that the only way to avert war was to select,
2 as the Premier, a man who would re-examine the Imperial
3 conference decision of September 6, 1941 and return to
4 a "clean slate," and that TOJO was a man who would
5 carry out such a policy, sounded so reasonable and
6 promising for a successful conclusion of the Washington
7 negotiations that not one of the senior statesmen pre-
8 sent expressed opposition. That KIDO made the sug-
9 gestion with respect to the selection of TOJO only
10 after careful study and deliberation is manifest from
11 the affidavit of KIDO.²⁰³ In recalling his interview
12 with TOJO,²⁰⁴ KIDO testified "I had noticed that the
13 General became more thoughtful, as it did not seem that
14 he would necessarily advocate war with America if the
15 navy was opposed to war. A change had apparently come
16 over his way of thinking in the past few days";
17 further in the KIDO testimony, paragraph 213, it is
18 stated "The next morning, October 17, 1941, Prince
19 KONOYE telephoned me and said it was his opinion TOJO
20 would be a better choice as Prime Minister than the
21 Navy Minister provided that he was given an Imperial
22 command to scrap the decision of September 6 and use
23
24
25
203. Ex. 3340 (Tr. 30,715).
204. Ex. 3340, para. 212 (Tr. 30,988).

his effort to effect cooperation and strive for peace."

1 As appears from the foregoing Prince KONOYE, too,
2 thought that War Minister TOJO was the most suitable
3 person to occupy the Premiership in the critical cir-
4 cumstances and uncertainty of those days. It was but
5 natural for ex-premiers, who had been retired from
6 politics, had no access to the confidential records
7 and discussions of the government and were not well
8 informed of the actual political situation to accept
9 the suggestion of KIDO, who did know the actual situation.
10 Moreover, at the time the senior statesmen accepted
11 that suggestion none of them had any knowledge with
12 respect to the full content of the Imperial conference
13 decision of September 6, 1941.
14

15 Upon receiving the Imperial order, General
16 TOJO formed a cabinet charged with the mission to
17 avert war. Before accepting the portfolio of Finance
18 Minister in the TOJO Cabinet, the defendant KAYA asked
19 TOJO if he was determined to open war with America,
20 and he accepted that office only after he had been
21 assured by TOJO that such a policy had not been deter-
22 mined and that he would stick to the policy of conti-
23 nuing the American-Japanese negotiations in Washington
24 in an honest attempt to reach a peaceful settlement. 206
25

205. Tr. 30,990.

206. Affidavit of KAYA, Section 6, Ex. 3337 (Tr. 30,648).

1 Furthermore, the defendant TOGO told TOJO, at the time
2 he was offered the post of Foreign Minister, that he
3 was unwilling to accept that position unless the
4 military would reconsider its position, with an inten-
5 tion to make considerable concessions to America with
6 respect to questions involving the evacuation of troops
7 and other matters; that is to say, he would decline
8 the office unless the military would sincerely cooperate
9 with his intention to reach an agreement with America
10 on a reasonable basis; and TOGO accepted office upon
11 that express understanding. ²⁰⁷ In this way, the TOJO
12 Cabinet was not a "war cabinet" but was a war preven-
13 tion cabinet and the early activities of that cabinet
14 all point to the fact that the intention of KIDO and
15 Prince KONOYE in selecting TOJO was aimed in the
16 direction of peace; and this is precisely what the
17 elder statesmen understood at the time they concurred
18 in the suggestion of KIDO. Of course, HIROTA had no
19 idea at the time he concurred in the suggestion of KIDO
20 that in the course of several months the Japanese
21 Government would be involved in the Pacific War.
22

23
24
25 207. Affidavit of TOGO, para. 44, exhibit 3646
(Tr. 35,671 et seq.).

The prosecution has also pointed out that

1 in the conference of October 17, 1941 HIROTA favored
2 a military man for Premier and attempted to give the
3 impression that he wished to have a regime which
4 would carry out war. This contention is plainly un-
5 supportable. Aside from the fact that Japan had
6 been engaged in large-scale hostilities with the
7 Chinese for nearly four years at the time that
8 conference took place, HIROTA did favor a military
9 man as Premier, not because he desired war, but
10 because of his firm belief as the result of his long
11 experience in dealing with the army that it was the
12 only solution to real control of the military element
13 and so long as the army exercised a voice in the
14 government a military man should assume the responsi-
15 bility for the policy and action of the government.
16 Of course, HIROTA's ideas were all running along
17 the line of stability and control within the govern-
18 ment. The impression sought to be created by the
19 argument of the prosecution is a strange one indeed
20 when it is considered that during the Washington
21 negotiations in 1941, the State Department hesitated
22 to work out any agreement with Prince KONOYE, a
23 civilian, because it thought that such an agreement
24 would not fundamentally settle anything so long as
25

~~the Japanese army had the power in fact to take~~

1 actions along contrary lines; so in the critical
2 days of October 1941, the installation of a military
3 man in the Premiership, who had the power to direct
4 the government and also to control the army, was a
5 perfect answer to American doubts.

6 According to exhibit 532,²⁰⁸ introduced by
7 the prosecution, HIROTA said in the senior statesmen's
8 conference of July 17, 1940: "It seems the China
9 Incident cannot be easily settled. If the next
10 cabinet is as weak as it has been, there is no other
11 way but to continue the present state of affairs.
12 Judged from this viewpoint, it would also be a good
13 thing to have a suitable military man capable of
14 working closely with the army and the navy. However,
15 if there is no such man, besides, since the military
16 themselves wish it there is no problem about asking
17 Prince KONOYE to take the field." When HIROTA there
18 said that former governments were "weak," he meant
19 of course that former governments were not strong
20 enough to carry out their pacific intentions against
21 opposing ideas of the military; he knew that situation
22 very well as the result of his bitter and disappoint-
23 ing personal experiences as Premier and Foreign
24
25 208. T. 6240.

Minister; what he wished for was a government strong
1 enough to orient and control the military without
2 causing unnecessary friction between the army and
3 navy; and in the absence of that situation, he
4 thought a settlement of the China Incident was impos-
5 sible. This is the only import which can be derived
6 from HIROTA's words as recorded in the KIDO diary.

7 Compare also the testimony of Yasunasa MATSUDAIRA
8 who assisted KIDO in recording the summary of the
9 Senior Statesmen's Conference: ²⁰⁹

10 "I had often
11 chances to call on Mr. HIROTA by the order of the
12 Lord Keeper of the Privy Seal or to sit with him at
13 various meetings, official and unofficial. In most
14 of these cases he told me with regard to the cabinet
15 that the state of things at that time pointed to the
16 necessity of adjusting the eccentric way of the
17 military, and that, for that purpose, there was no
18 other way but to have military leaders occupy the
19 responsible posts and assume the helm of state with
20 a strict control over the military, and that civil
21 statesmen lacked such capacity." What HIROTA said
22 in the Senior Statesmen's meeting of July 17, 1940
23 was nothing more than a repetition of the foregoing
24 testimony of MATSUDAIRA. At that conference of
25 ~~209.~~ Exhibit 3292 (T. 30025).

1 July 17, 1940 General YAGAKI or Admiral SUZUKI would
2 have been recommended as a suitable candidate and as
3 an ideal person to control the military had it not
4 been for the former's past unsuccessful attempt to
5 organize a cabinet and had it not been for the
6 latter's firm resolve not to take such a post.
7 HIROTA continued to look for such an "ideal" man
8 who could control the military, but as he pointed out
9 at a later conference of Senior Statesmen, "there
10 is no such man." The position which HIROTA took
11 in the Senior Statesmen's Conference of July 17,
12 1941,^{210.} about favoring the appointment of a mili-
13 tary man, was based on the same idea; that diary
14 entry of KIDO further states that HIROTA emphasized
15 in the conference the necessity of strengthening the
16 Imperial Headquarters, which meant that HIROTA wanted
17 to put civilians in the Supreme Command to act as a
18 tempering and moderating influence; and he pointed
19 to the fact that several eminent civilian statesmen
20 had been admitted to participation during the days of
21 the Russo-Japanese war. By these statements, HIROTA,
22 of course, was attempting to control and neutralize
23 military activities. It certainly does not help the
24 prosecution with its argument about "aggression."
25

210. EXHIBIT 1117 (T. 10166):

This point is illustrated in the MATSUDAIRA affidavit:

1 "As to the Imperial Headquarters, he (HIROTA) held that
2 its constitution should be enlarged by appointing some
3 of the Senior Statesmen as members of its staff, in-
4 stead of constituting its staff exclusively with
5 military and naval officers, as it had included civil
6 elements at the time of the Russo-Japanese war."

7 "Re-enforcement" of the Imperial Headquarters, as
8 mentioned in the KIDO Diary, could not possibly mean
9 re-inforcement of that body for the purpose of carry-
10 ing out war; clearly it pointed in the opposite
11 direction.
12

13 76. In the so-called Senior Statesmen's
14 Conference of November 29, 1941, HIROTA definitely
15 opposed the opening of a Pacific War and insisted
16 upon a continuation of the negotiations for a peaceful
17 settlement. So far as the negotiations were concerned
18 HIROTA had no view one way or the other with respect
19 to terms. The important thing in his mind was a
20 settlement. The prosecution referred to exhibit
21 212.

22 1196, another entry from the KIDO Diary, which
23 necessarily was written in skeleton style for the sole
24 purpose of refreshing KIDO's mind and not for the
25 purpose of portraying a full and adequate picture of
211. Exhibit 3292 (T. 30026).
212. T. 10452.

1 what actually transpired, in order to lend some color
2 to its contention that HIROTA had some aggressive
3 instincts about the opening of the Pacific War or at
4 least did not go far enough in his "dissuading"
5 statements on that occasion. Exhibit 1196, correctly
6 read, says the following so far as HIROTA is concerned:
7 "According to the explanation of the government, the
8 negotiations with America seem to have come to a
9 critical stage, but diplomatic negotiations often
10 encounter critical stages; they may come twice, three
11 times or more. If negotiation were patiently con-
12 tinued, somehow managing to overcome them, the true
13 intentions of the parties will mutually be understood,
14 resulting in a successful conclusion. Therefore,
15 though negotiations have come to a deadlock, we should
16 not jump into a war. By chance, some such unhappy
17 incidents as blows may be exchanged at some outpost
18 area; even then, negotiations must be continued by all
19 means to reach a pacific settlement." That exhibit
20 contains nothing whatever to show that HIROTA had
21 some opinion to justify a war; it does not even show
22 that HIROTA conceded the unavoidability of the war
23 or the fact that was was "inevitable." It most
24 certainly does not even hint in the direction of
25

1 the prosecution argument that HIROTA merely favored
2 a "postponement" of the war and continuance of diplo-
3 matic negotiations "after hostilities had commenced."
4 Moreover, exhibit 1196 also shows that all the senior
5 statesmen held negative attitudes or definitely
6 counseled caution against the initiation of hostili-
7 ties. This is powerfully re-enforced by the testimony
8 of Admiral OKADA, in whom the Chief of Prosecution
9 said he had "great respect and confidence,"²¹³ who
10 testified: "We all expressed negative opinions,"
11 and further, "As we had no accurate knowledge of the
12 situation we had no alternative than to take negative
13 stands and counseled caution."^{214.}
14

15 Referring again to exhibit 1196, it is to be
16 noted that there was a marked difference between the
17 opinion of HIROTA and that of other Senior Statesmen;
18 that is to say, HIROTA advised the continuation of
19 the negotiations, while other Senior Statesmen present
20 pursued negative and dissuading opinions. Therefore,
21 it could be said that HIROTA did something more than
22 take a negative attitude and in those critical cir-
23 cumstances voiced a positive opposition to the opening
24 of war.
25

213. T. 29301.

214. Exhibit 3229 (T. 29258).

77. The prosecution again refers to
215. exhibit 1278, another sketchy and skeleton excerpt from the KIDO Diary, that HIROTA said at the Senior Statesmen's Conference of July 18, 1944, after the war had already been in progress for three and a half years, that the execution of the war was first. Aside from the fact that the issue of whether or not the war was one of aggression is a triable issue and also laying aside the fact that whether or not a war is one of aggression would ordinarily be determined as of the time it began, it is clear from an examination of the foregoing exhibit that nothing that HIROTA said on that occasion lends itself in the least to any idea that he was in favor of the continuance of the Pacific War to the last; and otherwise it bears no construction as the prosecution seeks to draw. In that conference HIROTA said, bearing in mind that Japan had suffered serious setbacks and defeats as of that date, (1) that a situation may arise when the most radical steps might be necessary to save something out of the situation; (2) that the safety of the Imperial Household should be considered; (3) that the new government must be of the highest organization to cope with the situation; and (4) that
215. T. 11377.

1 the possibility should be examined with respect to
2 having an Imperial Prince as the Premier.
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1 The first two considerations clearly show
2 that HIROTA foresaw the defeat of Japan; the last two
3 considerations foresaw the measures which would be
4 necessary at the end of the war in order to hold
5 the people and polity of Japan together. In 1944
6 HIROTA thought that defeat would plunge the nation
7 into the greatest confusion and no ordinary man at
8 the head of the Government could cope with that
9 extraordinary situation; hence his opinion which
10 suggested the installation of a member of the Imperial
11 family, a symbol which would be revered and obeyed
12 by the entire nation. HIROTA pushed that opinion by
13 saying: "I think it is necessary to form at this
14 moment a real entire-nation cabinet with an Imperial
15 Prince in its center." When HIROTA's plan for the
16 installation of an "Imperial family cabinet" was
17 rejected, he advanced another idea and suggested an
18 Imperial order cabinet or a war-navy coalition cabinet.
19 Therefore, it is clear that HIROTA thought that if
20 an Imperial family cabinet was impossible, the prestige
21 of a coming possible "weak" cabinet should be bolstered
22 by a special Imperial order; and in short, HIROTA
23 thought it was necessary to have a "strong" cabinet
24 powerful enough to deal with the anticipated turbulent
25 situation at the end of the war.

78. When Prince KONOYE recommended Admiral
1 SUZUKI as the Premier in 1945, HIROTA supported him
2 and considered that the Admiral was a proper man to
3 deal with the critical conditions of those days.
4 SUZUKI was known to HIROTA and widely known as a
5 liberal and pacific influence who would be able to
6 guide Japan in concluding the war. SUZUKI was the
7 man who actually ended the war by accepting the
8 Potsdam Declaration; and as was shown by the testimony
9 offered in the HIRANUMA case, SUZUKI had been installed,
10 irrespective of outward appearances, in order to seize
11 the opportunity for the termination of the war²¹⁶.
12 It reveals the situation in which neither the elder
13 statesmen nor the Government could openly come out
14 and broadcast their real intention about the termination
15 of the war. As appears from exhibit 3646, paragraph
16 134, the affidavit of TOGO, HIROTA, together with
17 Admiral OKADA, Tsuneo MATSUDAIRA, Yasumasa MATSUDAIRA
18 and Tsunehisa SAKOMIZU, requested Mr. TOGO to enter²¹⁷
19 the SUZUKI Cabinet and lead it for the sake of peace.
20 According to the same exhibit (paragraphs 138-139),
21 HIROTA, in compliance with the request of Foreign
22 Minister TOGO, visited the Soviet Ambassador Yakov
23 Malik on several occasions in the spring of 1945 and
24
25 217. T. 35,618.

1 earnestly conferred with him in an effort to secure
2 Soviet good offices in re-establishing peace. Thus,
3 it appears from all the evidence in the case that
4 HIROTA opposed the decision of the Government that
5 the Pacific war was "inevitable", and from first to
6 last during the continuance of hostilities worked
7 insofar as it lay within his power as a private citizen
8 to bring an end to hostilities. Moreover, it ought
9 to be told that during the entire period of the
10 continuance of the Pacific war HIROTA met secretly with
11 Shigeru YOSHIDA at out of the way places, whom it will
12 be remembered HIROTA sought to appoint as his Foreign
13 Minister in the HIROTA Cabinet and who was not able
14 to take that place because of Army opposition but
15 whom HIROTA nevertheless appointed as Ambassador to
16 Britain, and who was the second Premier of Japan in
17 the allied occupation, with the full approval of the
18 Supreme Commander; they had a number of conversations
19 looking to ways and means of terminating the war which
20 both men regarded as a mistake which would accomplish
21 absolutely nothing in the end; YOSHIDA was caught by
22 the Kempei and was actually arrested; at the same
23 time the Kempei sought to arrest HIROTA but this could
24 not be accomplished because HIROTA had reached the
25 station in life in Japan where he was not subject to

arrest without the permission of His Majesty.

1 Although the prosecution has known about this episode
2 for fully two years, it, of course, carefully avoided
3 proving anything which might help HIROTA and at the
4 same time sought to take a word here and there out
5 of ineptly recorded diaries, which were never designed
6 to depict the full situation, and, thus, make it appear
7 by way of distortion that HIROTA was really an
8 aggressive person who camouflaged all his actions
9 behind "cleverness" and "smoothness". This Honorable
10 Tribunal will fully realize that this effort on the
11 part of the prosecution has backfired and, far from
12 proving the allegations of the Indictment, truly
13 reveals the real nature and character of the man as
14 a stalwart for the maintenance of friendly relations
15 with all nations and of peace on earth and good will
16 toward men.
17

18 SECTION 15

19 THE ARGUMENT OF THE PROSECUTION

20 79. We do not propose to deal here with
21 each of the many errors which appear throughout the
22 elongated argument of the prosecution; and, therefore,
23 HIROTA denies the prosecution argument in its entirety.
24 As HIROTA was never conscious of having been part of
25 any "common plan or conspiracy" and he has no intention

1 of entering into an argument with respect to matters
2 which occurred while he held no official office, the
3 critical discussion of the prosecution's argument
4 will be confined to several of the more important
5 matters which transpired during the days he did hold
6 office.

7 80. The alleged conspiracy which the
8 prosecution has attempted to trace and describe is
9 one of the most curious and unbelievable things ever
10 sought to be drawn in a judicial proceeding. A long
11 series of isolated and disconnected events covering a
12 period of at least fourteen years are marshalled
13 together in hodgepodge fashion; and out of this
14 conglomeration the prosecution asks the Tribunal to
15 find beyond all reasonable doubt that a "common plan
16 or conspiracy" existed to accomplish the objectives
17 stated in the Indictment, although the prosecution, as
18 is shown by their argument, has been hard put to it
19 even to point out an outline of any such common plan
20 or conspiracy. It is perfectly obvious that HIROTA
21 was not acquainted with a large majority of the
22 defendants who sit in the dock with him. Men like
23 DOHIHARA, HASHIMOTO, HATA, HOSHINO, ITAGAKI, KIMURA,
24 KOISO, MUTO, OKA, OSHIMA, SATO, SHIMADA, SUZUKI and
25 TOJO, UMEZU and others had no opportunity to come into

1 contact with HIROTA during the days he occupied the
2 Foreign Ministership and Premiership; and, of course,
3 HIROTA had no opportunity to know any views entertained
4 by those men or views entertained by most of the
5 men indicted with him in this case. As all the
6 larger powers in the world naturally desire to expand
7 their foreign trade in order to maintain or increase
8 the prosperity of their own people and at the same
9 time concurrently take appropriate measures to insure
10 the means for self-defense for themselves, it is easy
11 to see that had the method pursued here by the
12 prosecution of marshalling together hundreds of isolated
13 and disconnected facts been applied to the activities
14 over a similar period of other powers, every major
15 nation in the world could be adjudged guilty of
16 preparing for and waging wars of "aggression", although
17 from their own nationalistic point of view and intention
18 there was no such purpose.

19 81. The prosecution says that the alleged
20 conspiracy was on a rather dubious footing until the
21 Cabinet decision of August 7, 1936, at which time
22 HIROTA was Premier. They point to a single piece of
23 evidence (F-1)²¹⁸ and this is supposed to be the real
24 backbone of their case up at least until the time the
25 decision was made by Japan to enter the Pacific war.
218. Ex. 216 (T. 2727-8).

1 That piece of evidence involved an ineptly worded
2 decision of the Five Minister's Conference of August
3 7, 1936. The prosecution saw fit to read into the
4 transcript only part of that decision, which looms so
5 large in their estimation, and for that reason that
6 decision is reproduced in its entirety:

7 "I. The basic principle of governing the
8 state is to realize the ideal of the founding of the
9 Empire, which means to solidify, based on righteousness,
10 the national foundation inwardly and prosper outwardly,
11 making the Empire both in name and reality a stabilizing
12 power in East Asia, thus securing peace in East Asia,
13 and contributing to the well-being and happiness of
14 the whole world.

15 "In view of the situation in and out of the
16 Empire, the fundamental national policy to be established
17 by the Empire is to secure the position of the Empire
18 on the East Asia Continent by dint of diplomatic
19 policy and national defence, mutually dependent on
20 each other, as well as to advance and develop the
21 Empire toward the South Seas. The basic principles
22 are as follows:

23 "1. It is the realization of the Imperial
24 way to correct dominating policies of the powers and
25

1 to share mutual happiness according to the real spirit
2 of co-existence and co-prosperity. This should be
3 our consistent guiding principle for our outward
4 developing policy.

5 "2. We should replete our national defence
6 and military preparations, which are necessary to
7 secure peace for the nation, protect its development,
8 and to ensure the position of the Empire, which should
9 be a stabilizing power in East Asia.

10 "3. The fundamental principles of our
11 continental policy are as follows: a sound development
12 and accomplishment of Manchoukuo; intensification of
13 national defence of Japan and Manchoukuo in order to
14 eradicate the Soviet menace in the north and at the
15 same time to prepare against Britain and America;
16 and realization of a close cooperation among Japan,
17 Manchoukuo and China for our economic development.
18 In carrying out these policies, we should be careful
19 to have friendly relations with other countries."
20

21 By reference to the prosecution argument
22 (F-1) and at other places throughout the entire argument,
23 the prosecution has taken the words "national defence"
24 and converted them to "war"; it has taken an innocent
25 expression dealing with the expansion of trade "toward
the South Seas" and added to it that the expansion or

1 advancement was to be secured by the use of armed
2 force; it has said that "national defense" is not
3 "the usual correlative to diplomacy", and that the
4 usual "alternatives are diplomacy and war". It is
5 again perfectly obvious that there is nothing
6 inconsistent in associating in a single decision at
7 the highest level of government considerations of
8 diplomacy and national defense. Under the legerdemain
9 employed by the prosecution in its discussion of the
10 import of the foregoing decision reached at the Five
11 Ministers' Conference, it would be possible to indict
12 every statesman in the world because they consistently
13 refer to diplomacy and national defense. Moreover,
14 it must be considered that there was no reason for the
15 Japanese to use the "national defense" if they really
16 meant "war". The foregoing decision was a top secret
17 document of the Japanese Government. When it was
18 formulated the Japanese did not have the slightest
19 reason to suspect that such a decision would ever
20 fall into the hands of third powers or that their
21 brief and ineptly recorded expressions would be revamped
22 and transposed by those who read with a biased eye
23 and a predilection to sustain allied attitudes toward
24 the Japanese people. The decision of August 7, 1936
25 contains nothing to show that Japan drafted any plan

1 to initiate or wage declared or undeclared wars of
2 aggression against either China or countries in the
3 South Seas region; and there is nothing in the
4 collateral circumstances in Japan either before or
5 after that decision tending to show that Japan had
6 adopted a plan for aggression. In the individual
7 summation (FF-3) the prosecution again refers to the
8 decision of August 7, 1936 as being the "keynote" to
9 HIROTA's character and policy. There they say on
10 the basis of the August 7, 1936 statement that in
11 HIROTA's mind "national defense" was merely a "euphemism
12 for the use of military power for aggressive purposes".
13 This is argument run riot. If the words of the topmost
14 diplomats and political figures in the world were
15 read in similar distortion and weasel fashion, none
16 of them would have any defense whatever against the
17 battery of prosecutors involved in this case. Again
18 the prosecutors say that HIROTA "was a man who frequently
19 made pacific speeches and explanations to foreign
20 powers, but his real intention throughout was to expand
21 Japan's influence as far as possible by diplomacy
22 backed by threats of force" (FF-3). The truth is,
23 of course, that there is not a single line of evidence
24 anywhere in the case from which an inference could
25 be drawn or even hinted at that HIROTA sought to accomplish

1 anything in Japan by a threat or intimation of the
2 use of force. Everything which HIROTA has said and
3 done during a long period of public service, as is
4 shown by a large amount of uncontradicted evidence,
5 points him out as a man of peace, imbued with the
6 spirit of "harmony among all nations", and an
7 acknowledged liberal and pacifist. With further
8 reference to the decision of August 7, 1936, it needs
9 no argument to demonstrate that Japan had the right
10 to protect its nationals and their large legitimate
11 property interests on the continent of East Asia
12 by "diplomatic policy and national defense"; it had
13 the right while being progressively shut out of its
14 old markets throughout the world by tariffs and other
15 trade barriers to expand peacefully its foreign trade
16 in relatively undeveloped areas such as the South
17 Seas and for the purpose to encourage its nationals to
18 devote more attention to trade with that area, make
19 investments in commercial enterprises, plantations,
20 etc. to the extent permitted by the laws of the
21 countries lying in that area. Such a policy, as
22 permitted by all the leading nations of the world,
23 and peaceful economic exploitation and development
24 is a matter which does not fall within the scope of
25 the issues laid by the Indictment in this case. There

1 is nothing in the decision of August 7, 1936, when read
2 with a fair eye, to show that Japan intended to use
3 force to attain any unjust objective; and all the
4 circumstances of that period argue against the
5 overdone and strained contention of the prosecution.
6 Lastly, if the prosecution relies upon the August
7 7, 1936 statement of policy as the bulwark or sustaining
8 pillar of its alleged conspiracy up until at least
9 the Pacific war, it is, indeed, leaning its whole
10 case on a single broom straw²¹⁹.

11 82. Referring to the prosecutions' summation
12 (FF-7), if there were some frictions between the
13 Soviet and Manchoukuo concerning the function of the
14 Chinese Eastern Railway, there is no evidence that the
15 Japanese Government provoked such friction for the
16 purpose of putting pressure on the negotiations. The
17 prosecution's contention that the Russian Consulate
18 at Harbin complained strongly to the Japanese Foreign
19 Office representative on the subject (Ex. 748) is a
20 mistake. The addressee of the protest was the
21 representative of the Foreign Office of Manchoukuo,
22 not of Japan²²⁰.

23 83. The prosecution alleges that about the
24 220. TOGO testimony (T. 36,139-40).

25 219. Analysis of this decision of August 7, 1936, is
given in Section 6 hereof.

end of 1935 Japan had aggressive aspirations toward
 1 the Soviet Union and that these existed in the minds
 2 of the Foreign Ministry as well as in the Army (FF-9),
 3 invoking for that purpose a letter from SHIRATORI
 4 to ARITA²²¹. The perusal of this document will show
 5 clearly that it is nothing more than a private letter
 6 in which the writer stated merely his own and private
 7 view to one of his colleagues. Whatever may be the
 8 view expressed in that letter, it represents in no
 9 way the opinion or policy of the Foreign Minister
 10 or the Government.

84. In this respect, it may be pointed out
 12 that, even if the preliminary negotiation of a pact
 13 had been started while HIROTA was Foreign Minister
 14 (prosecution summation FF-13), between Ribbentrop and
 15 the Japanese military attache at Berlin, the Foreign
 16 Office at that time had nothing to do with that
 17 conversation²²².

85. A reference is made in the prosecution's
 20 summation (FF-18) to the testimony of witness KONDO.
 21 The Tribunal will recall that this witness at first
 22 admitted the entry of the HARADA-SAIIONJI Memoirs
 23 cited by the prosecution²²³ as he understood that the

221. Ex. 774-A (T. 7,383).

222. Ex. 677 (T. 5,913-16), Ex. 478, (T. 5,917-18).

223. Ex. 3777-B (T. 37,668).

1 alleged statements of Premier OKADA and Foreign
2 Minister HIROTA contained in that entry were made
3 at the time of the abrogation of the Washington Naval
4 Treaty but not before. Later, in redirect examination
5 he rectified his former testimony, stating that
6 neither OKADA nor HIROTA had made such statements
7 before the abrogation of the Treaty ²²⁴.

8 86. The prosecution (FF-25) refers to the
9 first report adopted by the League of Nations Assembly
10 on October 6, 1937 where Japan's actions were condemned
11 as being in breach of the Nine-Power Treaty and the
12 Kellogg-Briand agreement of 1928 and they apparently
13 seek to have this Honorable Tribunal treat that
14 political decision, as well as the decision on the
15 Lytton Report, as a finality in this case, not subject
16 to re-examination by a judicial tribunal. Aside from
17 the fact that judicial tribunals in the very nature
18 of things are not equipped to adjudicate "political"
19 questions, this Tribunal has already indicated on
20 several occasions that the views expressed by the
21 League will not be given any conclusive effect in these
22 proceedings.

23 87. The prosecution says in its summation
24 (FF-40) that HIROTA was Premier when the treaty between
25 224. T. 26,703.

Japan and Manchoukuo was signed abolishing the rights

of extraterritoriality in Manchoukuo and that this

treaty "encroached upon the rights of nationals of

the United States as accorded them by the treaty

concluded between the United States and China",

citing Exhibit 944²²⁵ and Exhibit 2476, A.B.C. D.²²⁶

An examination of those two exhibits fails to disclose

any basis for the statement made by the prosecution

with respect to encroachment upon the rights of

nationals of the United States or any other nation.

88. The prosecution says that the decision

of August 7, 1937, covered a far wider field (FF-58)

and that Shanghai was already at that time included

in the principal areas for using military force on

land (FF-61). This submission is due to the misreading

of Exhibit 3735²²⁷ which is quoted by the prosecution

to sustain this allegation. This document contains

two decisions. The second part is really the decision

taken by the Ministers concerned on August 7, 1937

as is clearly mentioned in the heading of this part

of the document. As to the first part of this

document which bears no date, it is to be remarked

that this part is originally a separate document from

225. T. 9,418.

226. T. 20,473.

227. T. 37,219.

the second part. If the Tribunal compares this part

with Exhibit 3262, "An Outline Regarding the Settlement
228

of China Incident", decided on October 1, 1937, it

would not be difficult to see that these two documents

are substantially the same. The identity is clear

in the original Japanese text. Therefore, both are

the same "Outline" decided on October 1, 1937.

Probably the prosecution picked up from a file containing

various decisions these two decisions and put them

together in one Exhibit 3735 and treated the first

part as a part of the second part, while the first

part is the "Outline" decided on October 1, 1937 and

the second part is the decision of August 7, 1937.

Needless to say, on October 1, 1937 the

hostilities had already occurred in the Shanghai area

and the fighting zone covered a large area. It is

quite natural, therefore, that on October 1, 1937 the

Japanese Government included Shanghai in the "principal

areas for using military force."

The fact that Japan did not consider Shanghai

in the field of operations prior to the Shanghai

Incident is established by another piece of irrefutable

evidence. On August 2, 1937 the Chief of the General

Staff confirmed to the Emperor that the Army would not

228. T. 29,771.

1 extend its operations farther than the Paoting line²²⁹.
2 89. The prosecution says (FF-66) with
3 respect to the tea party which HIROTA gave for
4 Japanese industrialists in soliciting their support
5 to suppress the anti-British movement then under way
6 in Japan that HIROTA expressed the fact "that Japan
7 might eventually have to fight England, although at
8 that moment the time was not ripe for an Anglo-Japanese
9 war", citing Exhibit 3784-A²³⁰, a piece of evidence
10 offered in the individual defense of HIROTA. What
11 the prosecution says is a gross distortion of that
12 exhibit. This exhibit shows that on November 2, 1937
13 HIROTA, in addressing the industrialists said "This
14 anti-British movement is very embarrassing at present.
15 Especially at present, there is no other country besides
16 England who would act as an intermediary between Japan
17 and China. Therefore, if such things are done now,
18 the Government will be placed in a very awkward position.
19 In the end we may have to fight England. Or, we may
20 also have to collide with her some time, but such
21 things are absolutely out of the question right now.
22 Especially, from the diplomatic point of view, the
23 Government will be greatly inconvenienced if such
24
25 229. Ex. 3875-A (T. 38,658).
230. T. 37, 695.

1 things are to be carried out at present." Consider
2 also that immediately upon the reading of that exhibit,
3 the President of the Tribunal remarked "That seems
4 to be wholly innocuous,"

5 90. The prosecution says (FF-81) that
6 Dirksen wired Berlin on January 17, 1938 and
7 "condemned the action of Japan in breaking off the
8 negotiations and cited her as being responsible to
9 the world for such action", citing Exhibit 486-G²³¹.
10 What Dirksen said there was "Even if Japanese impatience
11 over prolonged and unsatisfactory attitude of China
12 is understandable, Japan bears responsibility to the
13 world for breaking off the discussion"; and "The
14 rupture of connection with Chinese Government and the
15 severe declaration was decided upon only after violent
16 debate of many hours in which a part of the military
17 authorities supported continuation of the negotiations."

18 91. Again the prosecution says (FF-81)
19 that in a speech in the Diet on February 16, 1938,
20 HIROTA said "that Japan had never tried to compromise
21 with Chiang Kai-shek and would only enter into direct
22 negotiation if Chiang Kai-shek accepted the Japanese
23 terms, and that Japan had pursued a policy of chastising
24 231. T. 5,999.
25

China in order to change her attitude", citing
Exhibit 3737-A²³².

It is a record of the budgetary commission of the House of Peers called on February 16, 1938, just one month after the KONOYE declaration which proclaimed that the Japanese Government would no longer deal with the Chiang Kai-shek regime.

This evidence shows that Baron OKURA made a vehement attack on Foreign Minister HIROTA's policy on the ground that it was too lenient towards Chiang Kai-shek and his Government. He blamed the Cabinet for dealing with the Chiang Kai-shek regime, nourishing a conciliatory intention, and entering into negotiations with them through the German Ambassador.

Mr. HIROTA, as a Cabinet member, had to refute the attack. In defending his own policy, he explained the development of the situation up to that time. In consideration, however, of the general circumstances and the trend of the public mind at that time, he was compelled to use an expression which would match the atmosphere then prevailing in the Diet, for it was feared that, otherwise, his explanation would provoke unnecessary disturbances and stimulate the extremists, which was of course undesirable for the pursuance of
232. T. 37,285.

1 his policy. And it was natural that he did it in
2 such a way as might neutralize the advocates of
3 drastic policies.

4 In closing his reply he declared, it is true,
5 that Japan would have to punish by force the erroneous
6 ideas of the Nationalist Government of China, but he
7 added that he was doing his best to persuade the
8 Chinese Government to reconsider and change its attitude.
9 The true meaning of this remark can fairly be grasped
10 if one takes into consideration the circumstances
11 under which they were uttered. The Foreign Minister's
12 motive lay, without doubt, in defending his so-called
13 conciliatory policy. It was for the sake of camouflaging
14 his true intention for peace that he used such apparently
15 drastic, but rather void expression, blaming only the
16 idea of the Nationalist Government, but not the people
17 nor the country of China.

18
19 THE PRESIDENT: We will adjourn until half-
20 past one.

21 (Whereupon, at 1200, a recess was taken.)

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AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.

2 MARSHAL OF THE COURT: The International
3 Military Tribunal for the Far East is now in session.

4 THE PRESIDENT: Captain Kraft.

5 LANGUAGE ARBITER (Captain Kraft): If the
6 Tribunal please, the following language correction is
7 submitted. Reference: Exhibit No. 643, page 1, last
8 paragraph, delete that part of the paragraph beginning
9 with "I was informed," and substitute: "Having been
10 notified that the committee meeting of the Privy
11 Council which had been in session since this morning
12 at last adjourned at 7:30 p.m. and that the plenary
13 session would convene at 9:30, I went to the Palace
14 at 9:45 and upon learning that it had adjourned at
15 10:20 and that everything went well, I retired from
16 the Palace."

17 THE PRESIDENT: Thank you, Captain.

18 Mr. Yamaoka.

19 MR. YAMAOKA: May it please the Tribunal,
20 I shall continue on page 199, paragraph 92:

21 92. The prosecution says (FF-85) that HIROTA
22 cabled diplomatic officials in Hong Kong and Shanghai
23 on February 8, 1938 with respect to various propaganda
24
25

leaflets and pamphlets, citing exhibit 3271-A.²³³

1 This document, claimed to be a copy of a telegram of
2 the Foreign Office, bears no signature and lacks many
3 descriptions such as the despatch number, the date of
4 despatch, etc., necessary for proving that it was
5 really sent. For these reasons it may have been a
6 mere draft, for what action was taken thereon is un-
7 known. If it was really despatched, it must have
8 been sent by the Chief of the Information Bureau.
9

10 Although it bears descriptions that it was
11 despatched in the name of the Foreign Minister, this
12 does not necessarily mean that it was actually sent
13 by the Foreign Minister. The witness HORINOUCI has
14 testified that all out-going telegrams of the Foreign
15 Office bear the name of the Foreign Minister even
16 when they are actually despatched by the Chief of
17 the Information Bureau.²³⁴ Thus, the fact that the
18 telegram bears the name of the Foreign Minister does
19 not necessarily mean that the Foreign Minister has
20 really examined or approved of its contents. It is
21 the practice in the Foreign Office that the Foreign
22 Minister puts his own signature to every official
23 document which is brought before him for his approval.
24 And accordingly, the lack of signature on his part
25

233. Tr. 37255. 234. Tr. 29898.

1 proves that he had not seen or approved the document.
2 In view of the above, it would be impossible to hold
3 Mr. HIROTA responsible for anything because of such
4 doubly doubtful document.

5 93. The prosecution says (FF-94) that the
6 excuse that the bombing of the Panay and the Ladybird
7 was accidental is shown to be untrue by the evidence
8 mentioned above and that fact must have been known
9 to be untrue by HIROTA. This is quite a fantastic
10 assertion. None of the evidence introduced in the
11 Tribunal suggests even slightly that HIROTA had been
12 insincere in presenting his apologies for these occur-
13 rences or that he had any doubt as to whether the
14 incidents were not really accidental. The allegation
15 of the prosecution is absolutely groundless.

16 94. The prosecution says (FF-96) that HIROTA
17 had been a participant as Premier in the decision of
18 June 30, 1936, where the basis of Japan's national
19 policy had been decided, which was to include
20 "getting rid of the menace of the U.S.S.R., while
21 preparing against Great Britain and the United States,"
22 and they cite in support of that statement exhibit
23 978.²³⁵ Exhibit 978 was received in evidence on the
24 prosecution's case but no part of that exhibit was
25 235. Tr. 9548.

1 read by them into the transcript. Although this
2 point was fully dealt with in section 6, paragraph
3 37 of this summation and again in this section at
4 paragraph 81, we ask the Tribunal to inspect that
5 exhibit because it affords no justification for the
6 foregoing statement of the prosecution. That exhibit,
7 among other things, says:

8 "On 30 June 1936, after the cabinet con-
9 ference ended, the premier, the foreign and finance
10 ministers remained on request by both the army and
11 navy ministers. At the meeting of the above five
12 ministers, the navy minister presented the annexed
13 report (Basic Principle of State Policy) and explained
14 it. * * *

15 3. The foreign minister said that in view
16 of the present international situation, it was neces-
17 sary for Japan to make efforts to avoid isolation.
18 Since in (3) of Item 1, it is stated 'strive for
19 friendly relationship with foreign countries,' the
20 foreign minister considered the spirit to be in
21 line with his idea. However the phrase 'to provide
22 against England and America' seemed to be cause for
23 some apprehension and he requested a definition of
24 this phrase. The navy minister explained that this
25 was only a provision for military preparedness in

1 case of emergency and that it was absolutely not
2 intended to look upon England and America as
3 enemies. The foreign minister then stated that
4 under the present international situation, Japan
5 should not only be regardful of keeping friendly
6 relationship with England and America but should
7 strive further to assume a more conciliatory atti-
8 tude than in ordinary circumstances."

9 95. The individual summation of the
10 prosecution dealing with HIROTA contains many addi-
11 tional errors. Most of the erroneous statements
12 have been corrected in the main part of our summa-
13 tion. Because of our desire to keep this summation
14 within reasonable bounds, it has been necessary to
15 omit detailed reference to many of the other minor
16 errors in the summation of the prosecution.

17 SECTION 16.

18 GENERAL CONTENTIONS WITH REGARD TO THE
19 INDICTMENT AND THE LAW

20 96. The accused again most respectfully
21 urges the Tribunal to reconsider his motions which
22 he first sought to file in May 1946, did file at the
23 conclusion of all the evidence on behalf of the
24 prosecution, and refiled in amplified form at the
25 conclusion of all the evidence, dealing with the

1 jurisdiction of the Tribunal and the powers vested
2 in the Supreme Commander; and he respectfully asks
3 the Tribunal to dispose of those contentions in its
4 final judgment. The accused also moves again that
5 this Honorable Tribunal dismiss each and every count
6 of the Indictment relating to him because there is
7 no substantial evidence in the record to support any
8 one of those counts, and because the prosecution has
9 failed to establish its case in any respect beyond
10 all reasonable doubt. Additionally, the accused
11 submits that all the evidence in the case shows that
12 there is more than a reasonable doubt with respect to
13 his guilt under any single count; and that in any
14 event the hypothesis of innocence has not been over-
15 come by the preponderance of proper evidence.

16 All the matters submitted in the general
17 defense summations in so far as they are not contro-
18 verted in this individual summation are adopted by
19 this accused and it is respectfully requested that
20 they be deemed a part of this summation, as though
21 herein specifically set forth.

22 97. The accused most respectfully requests
23 this Tribunal to give deep consideration to the fact
24 that mortal men summoned to serve their Government
25 and to discharge the functions of government at the

1 highest stratum lose their character and identity
2 as individuals and mortal men whose judgments are
3 subject to all human frailties, and that having lost
4 their identity as individuals the acts they perform
5 or omit are in reality the acts of the sovereign
6 itself; and that if it were otherwise, governments
7 themselves would find it most difficult to function
8 because of sheer inability to obtain the services of
9 men of ability and common sense who are willing to
10 subject themselves to trial by an international
11 tribunal exercising criminal jurisdiction for acts
12 and omissions gauged as a result of the accidental
13 vagaries of a possible future war.
14

15 98. HIROTA as Foreign and Prime Minister
16 was obliged to handle the affairs of government
17 within his competence and authority in the wake of
18 the Manchurian Affair and the emergence of Manchukuo
19 which were fait accompli before he assumed public
20 office. The China Incident occurred and developed
21 under circumstances beyond his control or competence.
22 As to the Pacific War, his opposition was the voice
23 of a mere private citizen without competence or
24 authority. He did his best to check the spread of
25 hostilities and the tragic outbreak of war notwithstanding, as no other pacific-minded statesman could,

but in vain because of circumstances over which he
1 had no real voice or control.

2 The standard of criminal responsibility for
3 one's act or nonfeasance under any system of law
4 should be that required of any ordinary common man
5 not that of a super-human. HIROTA did everything
6 that an ordinary statesman under similar conditions
7 could do in pursuing the path of peace. The principle
8 of "Nichtzumutbarkeit" (impossibility of reasonable
9 expectation, requirement or demand) which is well
10 established in law theoretically as well as practically
11 should be applied. The law cannot and should not
12 require more than that.
13

14 For all the foregoing reasons, it is with
15 great deference and respect submitted that there is
16 no justiciable issue under the Charter; that the
17 Indictment and the counts do not charge offenses
18 known to international law and justiciable thereunder;
19 that the prosecution has wholly failed to sustain its
20 burden of proof as against this accused; that instead
21 HIROTA Koki, upon an impartial review of the entire
22 record in this case, should be acquitted of all the
23 charges brought against him. This record convincingly
24 confirms the high regard and esteem expressed by un-
25 impeachable and authoritative statesmen and diplomats

1 of some of the nations here represented who dealt
2 with him intimately during the turbulent years of
3 his career. It is they who know him well. It is
4 they who have come to his succor even though an enemy
5 in defeat in order that justice may be done. May
6 this Tribunal return a finding of acquittal which
7 he so well deserves and permit him again to walk the
8 path of peace.

1 MR. HAYASHI: I am Council HAYASHI, Itsuro,
2 for the defendant HASHIMOTO, Kingoro.

3 With the Court's permission I should like to
4 point out prior to reading our summation the parts
5 which I shall refrain from reading but which I desire
6 to be entered into the record:

7 A. (pp. 1-7) The table of contents and the
8 Introduction to the general argument.

9 B. (pp. 24-30) Chapter III of the general
10 argument.

11 C. (pp. 45-53) Chapter IV, 1, b. of the
12 general argument.

13 D. (pp. 68, line 6 - p. 77) Chapter IV,
14 3 of the general argument.

15 E. (pp. 71-72) Appendix to the special
16 argument.

17 (The portions above referred to
18 are copied as follows:)

19 CONTENTS OF SUMMATION FOR HASHIMOTO KINGORO.

20 Table of Contents

21 INTRODUCTION

22 General Argument

23 Chapter I. Serious Fallacies in the Indictment.

24 1. Transition of Political Power.
25

1 2. The Three Major Facts Have No Connection.

2 3. Mistaken Judgment of Accused KIDO.

3 Chapter II. Accused HASHIMOTO did not participate
4 in any Conspiracy.

5 Chapter III. Concerning HASHIMOTO in Appendix E
6 of the Indictment.

7 1. Attached to the Army General Staff.

8 2. Retirement from Army.

9 3. Author of "Declarations of HASHIMOTO Kingoro."

10 4. Re-entered the Army.

11 5. Commanded an Artillery Regiment at the
12 Rape of Nanking.

13 6. In command of Japanese Forces which shelled
14 the "Ladybird" and the "Panay."

15 7. Author of a large number of books, articles
16 in the magazine "Taiyo Dai Nippon" and other publi-
17 cations and public speeches, all advocating aggressive
18 warfare.

19 8. Member of a number of societies for the
20 instigation of army control over politics and further-
21 ance of aggressive warfare.

22 9. Promotor of a number of plots designed to
23 remove politicians and officers whom he did not
24 consider sufficiently aggressive.
25

10. Founder of the I.R.A.A.

11. Elected to the Lower House of the Diet.

Chapter IV. Refutation to Prosecution's Summation.

1. General Argument.

a. Conspiracy.

b. Misinterpretation of evidence and
Misconception of facts.

2. Matters pertaining to HASHIMOTO.

a. Berlin Talk.

b. Caucasus Report.

c. Exhibit 177.

d. KIDO's Diary and TANAKA's Testimony.

e. Cherry Blossom Society.

f. Testimony of FUJITA Isamu.

g. Leading Members of Cherry Blossom Society.

h. March Incident.

i. Mukden Incident.

j. October Incident.

k. The Ladybird Incident.

l. Books, Articles and Speeches.

m. Associations.

n. Murder Suspect.

o. No Evidence is shown in the Conclusion
of the Summation.

p. It is not murder.

q. Atrocities.

3. Matters pertaining to other Defendants.

a. Accused ARAKI.

b. Accused HIROTA.

c. Accused ITAGAKI.

d. Accused KOISO.

e. Accused MATSUI.

f. Accused MINAMI.

DETAILED ARGUMENT

Chapter I. Manchuria.

1. "Sakurakai" (Cherry Blossom Society).

2. March Incident.

3. October Incident.

4. 5-15 Incident, etc.

5. Mukden Incident.

6. Foundation of Manchukuo, etc.

Chapter II. China.

1. Marco Polo Bridge Incident.

2. The "Ladybird" Incident.

a. Errors in point of fact.

b. Responsibility for bombardment.

3. Atrocities in Nanking, Kwangtung, Hankao, etc.

Chapter III. Soviet Union.

1. Caucasus Report.
2. Berlin Talk.

Chapter IV. Associations.

1. Imperial Rule Assistance Association.
2. Imperial Rule Assistance Man's Association.
3. Imperial Rule Assistance Political Association.
4. Japan Youth's Party.
5. Dai Nippon Sekiseikai.
6. Sakurakai (Cherry Blossom Society).

Chapter V. Books, Articles and Speeches.

1. Books.
2. Articles.
3. Speeches.

CONCLUSION

APPENDIX

Reason for Objection on Dr. TAKAYANAGI's
"Argument on Law".

SUMMATION FOR THE ACCUSED HASHIMOTO, KINGORO.

INTRODUCTION

The Indictment charges the accused HASHIMOTO
Kingoro as follows:

HASHIMOTO participated as leader, organizer,
instigator or accomplice in the formation or execu-
tion of common plans or conspiracies, as set out in

1 Counts 1-5; planned and prepared wars of aggression
2 and wars in violation of international law, treaties,
3 agreements and assurances, as set out in Counts 6-17;
4 initiated wars of aggression and wars in violation of
5 international law, treaties, agreements and assurances,
6 as set out in Counts 18 and 19; waged wars of aggres-
7 sion and wars in violation of international law,
8 treaties, agreements and assurances, as set out in
9 Counts 27-32 and Count 34; participated as leader,
10 organizer, instigator or accomplice in the formation
11 and execution of common plans or conspiracies to
12 commit murder and, by unlawfully ordering, causing
13 and permitting the armed forces of Japan to attack
14 the cities of Nanking, Kwantung and Hankao in breach
15 of treaties with the Republic of China and to slaughter
16 the inhabitants contrary to international law, unlaw-
17 fully killed and murdered large numbers of people,
18 is set out in Counts 44-47; and participated as
19 leader, organizer, instigator or accomplice in the
20 formation or execution of common plans or conspiracies
21 to commit conventional war crimes and crimes against
22 humanity, as set out in Counts 53-57.
23

24 However, the evidence offered by the prose-
25 cution is far from being adequate and sufficient to

1 support the charges. On the contrary, some of the
2 evidence adduced by the prosecution shows the inno-
3 cence of the accused.

4 On the other hand, the defense evidence in
5 the general phase as well as in HASHIMOTO's individual
6 phase has conclusively shown that the accused
7 HASHIMOTO is free from all the charges in the Counts
8 in which he is indicted.

9 Under such circumstances, the summation for
10 HASHIMOTO will be as brief as possible.
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GENERAL ARGUMENT

Chapter I

Serious Fallacies in the Indictment

1. Transition of Political Power.

As the accused KIDO emphasizes in his affidavit,¹ for a long period since 1928 the political power of Japan was in the hands of MAKINO Nobuaki, Lord Keeper of the Privy Seal, and SAIONJI Kimmochi, the "Genro" or Elder Statesman. Unless patronized by both of them it was absolutely impossible, in fact, for anybody to be Prime Minister, however excellent and able he might be.

According to the KIDO affidavit,² and his testimony,³ behind Mr. SAIONJI there were two men who had a strong influence upon him in deciding a matter. These were Messrs. KONOYE Fumimaro and HARADA Kumao. Behind Mr. MAKINO, too, there was one who had a similar influence upon him. This was nobody but Mr. KIDO, Koichi, who is now in the dock. Under these circumstances, said KONOYE, HARADA, and KIDO used to meet together and discussed political matters, although at that time they were not in any direct official position to do so.⁴

The next sentence has been corrected as

1. Ex. 3340, tr. 130724, 30821

2. Ex. 3340, tr. 30719, 30722, 30732, 30733

3. Tr. 31,541

4. Tr. 30,774, 30,733, 30,734, 30,723, 30,724

follows: Consequently, all those who aspired to become Premier or a State Minister competed with each other to be the first to enter the grace of these three men and supply them with every kind of information. The above-mentioned points are repeatedly testified to by the accused KIDO in his affidavit.⁵

Those important persons who, according to the KIDO affidavit and his testimony,⁶ used to meet Messrs. KONOYE, HARADA, and KIDO at parties or on various other occasions and who used to exchange information with them concerning political affairs, we may mention the following names: SUZUKI Teiichi, SHIGEMITSU Memoru, SHIRATORI Toshio, INUKAI Ken, ARIWA Rainei, SAKAI Tadamasa, OKABE Nagakage. Except the Accused SUZUKI, these men were neither army nor naval officers. Most of them belonged either to a privileged class called "Peers" or to a special category of diplomats. Even the only exception, the accused SUZUKI, later retired from the active service of the army and converted himself, just as he had long desired, into a politician. Of the above-mentioned people, Messrs. SUZUKI, SHIGEMITSU, and SHIRATORI are the accused in this trial.

5. Ex. 3340, tr. 30,736, 30,770, 30,782

6. Ex. 3340, tr. 30,734, 30,736, 30,737, 3040, 30,772
Tr. 30,743, 30,754, 30,759, 30,760, 30,768, 30,770,
30,800, 30,894

7. Tr. 31,297, 31,298

Since the time the First KONOYE Cabinet was
1 formed in 1938, there was, generally speaking, no
2 cabinet which did not include at least one of the
3 above-mentioned people. For the sake of illustration
4 let us refer to the Table of Cabinets⁸ which was pre-
5 sented by Mr. Blewett. In the First KONOYE Cabinet
6 we find Messrs. KONOYE, KIDO and ARIMA. In the FIRA-
7 NUMA Cabinet, Messrs. KIDO and KONOYE. In the ABE
8 Cabinet, Mr. SAKAI. In the Second and the Third
9 KONOYE Cabinet, Messrs. KONOYE and SUZUKI. It is
10 further remarkable that the TOJO Cabinet included
11 Messrs. SHIGEMITSU, SUZUKI and OKAWA, among whom Mr.
12 SHIGEMITSU retained his office in the succeeding
13 KOISO Cabinet.
14

15 In short, at first the situation was such
16 that whoever wished to become premier had to win the
17 favor of Messrs. SAIONJI, MAKINO, KONOYE, HARADA,
18 and KIDO. Afterwards, however, this situation was
19 changed owing to the retirement of Mr. MAKINO and the
20 death of Mr. SAIONJI. From that time on it became
21 necessary to the formation of a cabinet that it pick
22 up one or a few members out of the above-mentioned
23 group of peers and diplomats who used to hold meetings,
24 8. Tr. 2344, tr. 17,698
25

at which Messrs. KONOYE and KIDO took the lead.

In this way the center of Japan's political power shifted from the hands of Messrs. SAIONJI and MAKINO into those of Messrs. KONOYE and KIDO. This transition of power affected the procedure followed on the occasion of a cabinet change in the following way. After the death of Mr. SAIONJI and the retirement of Mr. MAKINO the choice of a new premier was decided upon by a group of "Jushin," or Senior Statesmen, as they were called, headed by Mr. KONOYE and consisting of Messrs. OKADA Keisuke, YONAI Mitsumasa, TAKATSUKI Reijiro, ABE Nobuyuki -- all of whom have testified before this Tribunal -- and others, and this decision was then recommended to the Throne by Mr. KIDO, the Lord Keeper of the Privy Seal. In this way the Cabinet was formed.

The accused KIDO's affidavit⁹ and his testimony¹⁰ show this point very clearly. Thus the helm of the state at that time was completely in the hands of the accused KIDO as well as the members of the so-called "Jushin" group. As far as the political power was concerned, the almighty power of these people was unquestionably established.

9. Ex. 3340, tr. 30,902, 30,903, 31,082, 31,122, 30,787, Tr. 30,937, 30,972, 30,973, 31,102.
10. Tr. 31,334.

In this connection the point which I wish to emphasize particularly is that no army or naval officer on the active service was to be found among these people who thus monopolized the almighty power in respect to the Political Power.

According to the affidavit¹¹ and the testimony¹² of the accused KIDO, at the time the Third KONOVE Cabinet collapsed the question whether the next cabinet be entrusted to the accused TOJO or to Admiral OIKAWA was decided by the accused KIDO's advice only.

And further, according to the accused KIDO's testimony¹³ he and Mr. KONOVE at last went so far as to interfere in the choice of the War Minister.

Thus, the politics of Japan was being carried in ways of aforementioned favoritism, while the Imperial Diet as well as the general public, government officials and the members of the army and navy, had no knowledge of it.

It will be absolutely impossible for us to determine the responsibility for the war without reference to the transition of Japan's political power as stated above.

2. The Three Major Events Have No Connection

11. Ex. 3340, Tr. 30,986, 31,011
 12. Tr. 31,606, 31,601
 13. Tr. 31,338, 30,882, 30,883

In Japan there existed nothing which might
1 be called a "military clique." This point has been
2 conclusively proven by the accused TOJO in his affi-
3 davit.¹⁴

4 As stated above, the helm of the state re-
5 mained for a long time in the hands of Messrs. HAKINO
6 and SAIONJI, and later shifted to those of Messrs.
7 KONOVE and KIDO as well as a group of the so-called
8 "Jushin". It was of course quite impossible for an
9 army or naval officer to secure political power for him-
10 self. In other words, there was no room for a rise of
11 anything like a military clique.
12

13 The prosecution alleges that "In Japan there
14 was a group called 'Military Clique', which, advocating
15 the principle of aggression, secured despotic domina-
16 tion over the politics of Japan." The reason why the
17 prosecution has failed to prove the existence of the
18 alleged military clique was because there was no exist-
19 ence of a military clique as we have shown in the
20 above. It is also for the same reason that the prosecu-
21 tion has not been able to define military clique.
22 After all, it is clear that there was no such clique.
23

24 Further, in view of the above-mentioned transi-

tion of political power, there is no room for doubt that
1 there was and there could not have been any series of
2 conspiracies in Japan as is alleged by the prosecution.
3 The Japanese politics was being steered freely by the
4 whim of the small group of men who held the actual
5 powers. Thus, it was impossible to have a continuous
6 line of conspiracy, if there was any, other than
7 these persons, even if any other person had ever made
8 an attempt.

9
10 The prosecution regards the Manchurian and
11 China Incidents and the Pacific War as a consistent
12 series of events. In order to have these events to
13 form one consistent series, something was necessary to
14 connect them with each other. It seems that in search
15 of such a common connecting factor the prosecution in-
16 vented the conception of military clique. That is the
17 grave fallacy.

18 We now entrust the Tribunal to direct its
19 attention to the transition of power in Japan during
20 the past twenty years. Inconsistency in policies has
21 characterized the politics of Japan during this period.
22 The attitude of the government has always been waver-
23 ing between active and passive policies and between
24 armament expansion and armament reduction. This was
25 because of the existence of the privileged classes

1 and the political batons were given and taken freely
2 by the will of these privileged class people. If a
3 military clique had really existed, there would have
4 been some constant and firmly established principle.
5 In reality, however, such was no the case.

6 If the above-mentioned three major events
7 had been a consistent series of actions planned and
8 executed by a "military clique," there would have
9 been some constant factor common to the planning and
10 preparation of the Manchurian Incident with that of
11 the China Incident and the China Incident with the
12 Pacific War, and connecting each of these events with
13 each other in every respect. Such continuity in
14 planning would have been necessary above all in respect
15 to military operation. There is no evidence, however,
16 that proves this point. This is simply because such
17 were not the true circumstances. It is also clear
18 that there was no consistent conspiracy, and there is
19 no evidence offered to prove its existence.

20 Further, the point that the three major
21 events were not a series of actions connected with
22 each other has been proven beyond doubt by witness
23 TADA, Shun, former member of the General Staff, who was
24 for many years in charge of operational plans.¹⁵
25

15. Tr. 3386, 3388, 3389

Therefore, we must first recognize that each of the three major events broke out from independent causes, and then go on to inquire into these causes.

3. Mistaken Judgment of the Accused KIDO

If the Indictment is based upon the KIDO Diary or the HARADA Memoir, it must contain very serious errors.

For the most part the diary and the memoir consist of titbits of information which were brought in by those who used to talk with Messrs. KIDO or HARADA and which the authors indiscriminately scribbled down as they reached their knowledge.

Moreover, the accused KIDO himself admitted¹⁶ in his testimony that he had no special staff for the collection of information. The same applies also to Mr. HARADA.

It is very easy to understand that the newsmongers were prone to pick up and color the news so as to render the situation favorable for themselves, hoping thereby to win a high position of the state. At any rate, it is beyond question that both the Diary and Memoir are medleys of unreliable information.

16. Tr. 31,268

In fact, the accused TOJO stated in court
 1 that the "KIDO Diary is mistaken." ¹⁷ The accused
 2 KOISO also testified that a "statement in the KIDO
 3 Diary ¹⁸ is contrary to the truth." ¹⁹

4 In his affidavit ²⁰ the accused KIDO said that
 5 "the March Incident in 1931 was the beginning which
 6 gave rise to a group in army to control the politics"
 7 and that "this information was given me by the accused
 8 SUZUKI and Major General NAGATA, Tetsuzan."

9 However, as is clear in the testimony of the
 10 accused HASHIMOTO, ²¹ neither the accused SUZUKI nor
 11 Major General NAGATA took part in the March Incident.
 12 As it is a well known fact, the March Incident was
 13 nipped before its execution. Then, how could an out-
 14 sider know the nature of a miscarried plan? Strangely
 15 enough, however, the KIDO Diary states as if HASHIMOTO
 16 had planned "the occupation of the Army General Staff
 17 Office," ²² an idea which he never dreamed of. This is
 18 simply because the Diary is a mess of colored and ex-
 19 aggerated information.
 20

21 Especially, the accused KIDO states that he
 22 kept company with the accused SUZUKI merely because
 23 he wanted information. ²³ The accused SUZUKI states in

24 17: Tr. 36,715 21: Tr. 28,819
 25 18: Ex. 179-F 1927, 1928 22: Ex. 3340, tr. 30,739
 19: Tr. 32,281 23: Ex. 3340, tr. 30,736
 20: Ex. 3340, tr. 30,723

1 his affidavit,²⁴ "At that time I was deeply interested
 2 in politics." In fact, availing himself of his connec-
 3 tion with Messrs. KONOYE and KIDO, he later started a
 4 political career.²⁵ It is therefore highly probable
 5 that the information he brought in was more or less
 6 biased by his own interests.

7 It is entirely due to the above circumstances
 8 that the March Incident, which was really aimed at an
 9 internal reform of Japan, was misunderstood and mis-
 10 represented as if it were the outcome of the political
 11 ambition of the army's desire to be an impellent force
 12 in the politics.

13 The March Incident was the reformative move-
 14 ment of purely domestic nature aimed at establishing a
 15 cabinet under the premiership of General UGAKI Kazushige
 16 as shown in General UGAKI's affidavit.²⁶ General UGAKI
 17 is, as he himself stated in his affidavit, a man who
 18 "advocated armament reduction as well as economization
 19 of military expenditure; who issued orders to cut down
 20 army forces and succeeded in doing so; and who was
 21 twice recommended for the post of "War Minister."

23 Returning to the question of the March Inci-

24 24. Ex. 3605, tr. 35,187

25 25. Ex. 3605, tr. 35,187

26 26. Ex. 163, tr. 1605

1 dent, the accused KIDO, looking over the past after
2 the termination of the Pacific War, entertained an
3 illusion, the March Incident was the beginning of the
4 aggression movements, basing it only on unreliable in-
5 formation without relying on facts.

6 What has been stated above in regard to the
7 KIDO Diary applies in the main to the HARADA Memoir,
8 too. The fact that even the accused KIDO, so closely
9 associated with Mr. HARADA, denies in his testimony²⁷
10 every passage of his conversation appearing in the
11 HARADA Memoir, is an eloquent proof of its unreliability.
12 Further, its inaccuracy has been shown by the accused
13 ²⁸TOJO, as well as the accused ²⁹KOISO. There are count-
14 less denials of the HARADA Memoir. Therefore we con-
15 sider it is unnecessary to go into any further argument
16 on the credibility of the HARADA Memoir.
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23 27. Tr. 31,426, 31,530
24 28. Tr. 36,656
25 29. Tr. 32,326, 32,406

CHAPTER II

Accused HASHIMOTO did not Participate in
any Conspiracy.

In reply to our motion to dismiss Mr. Carr
of the prosecution alleged that "His main function in
this conspiracy was as a propagandist" and then
added that "If OKAWA was rather the man who provided
the ideas behind the conspiracy, HASHIMOTO was a
principal among those who popularized them."

However, what the prosecution offered in evi-
dence to support the charge were only some of HASHI-
MOTO's books and articles and nothing more. Further,
the prosecution has failed to prove the relation
between the accused HASHIMOTO and the thought of
Dr. OKAWA. The accused HASHIMOTO himself has clearly
stated in court that his ideas were not derived from
nor inspired by Dr. OKAWA.¹ The prosecution is
strongly stressing this very important point without
producing the evidence. The accused HASHIMOTO cannot
bear such absurdities.

According to the affidavit of the accused
HASHIMOTO² as well as that of witness OGAWA, Kiichiro,³

1. Tr. 28,805, 28,806, 28,807
2. Ex. 3195, Tr. 28,791-2.
3. Ex. 3193, Tr. 28,786

1 it is true that HASHIMOTO published his personal opin-
2 ions in books, and made speeches. However, he wrote
3 and spoke as a plain, unofficial citizen and without
4 any common plan or conspiracy with other people.

5 Like the amended Article I of the American
6 Constitution and other countries, the Article 29 of
7 the old constitution of Japan provided: "Any Japan-
8 ese subject enjoys the freedoms of speech, the press,
9 assembly and association within the scope of law."⁴

10 The accused HASHIMOTO's activities were quite up-
11 right and straightforward and within the legal scope
12 recognized by this Constitution. As shown by his
13 personal history,⁵ it is quite inconceivable that the
14 accused HASHIMOTO should have taken part in any of
15 the conspiracies alleged by the prosecution.
16

17 Entirely free from any pecuniary greed and
18 desire for fame, the accused HASHIMOTO is a man of
19 utmost frankness and uprightness who conceals
20 nothing and who tried anything which he considers
21 good. Therefore, he has always been kept away from
22 those who struggled for high positions in the govern-
23 ment by all sorts of flattery and treachery. This
24 is precisely the reason why he was dismissed from the
25

4. Ex. 68, Tr. 17,474

5. Ex. 105, Tr. 699

1 army in such a low rank as colonel. Further, inas-
2 much as he did not flatter influential and high-
3 ranking personages, he has had no opportunity to
4 make friends with any of the other accused. On the
5 other hand, this is also the reason why he was loved
6 and respected by pure-hearted young people. In other
7 words, the accused HASHIMOTO has gone his own way,
8 completely independent of those leaders who dominated
9 the nation in political, diplomatic, military, econ-
10 omic and cultural fields.

11 Concerning this point the accused HASHIMOTO
12 states in his affidavit as follows:

13 "I was never in any official position to
14 participate in any conspiracy, planning or prepara-
15 tion of the Manchurian and the China Incidents and the
16 Pacific War. Nor did I ever participate in any such
17 conspiracy, planning or preparation. Besides, I
18 have never been on friendly terms with any of the
19 defendants." ⁶ There is another proof that throws
20 further light upon this point. This is the testimony
21 of Lieutenant General TANAKA, Shinichiro. In reply
22 to a question put to him by Colonel Ivanov of the prose-
23 cution, he stated as follows: "Such opinions or views
24 are not reflected in the operations plans drawn up by
25 6. Ex. 3195 (Tr. 28,791)

1 the General Staff. HASHIMOTO, Kingoro, as far as I
2 know, is just one of the common people, a civilian,
3 and at that time had no position of leadership or
4 influence in matters of this kind."

5 The prosecution charges the accused HASHI-
6 MOTO with the crime of conspiracy without even show-
7 ing a fact or producing in evidence. Nothing would
8 be more absurd in our opinion than this attempt on
9 the part of the prosecution.

10 In view of the above we contend that, how-
11 ever wide and comprehensive we may interpret the term
12 conspiracy, the acts of the accused HASHIMOTO can
13 never fall within its scope.

14 Chapter III

15 Comments on Appendices to the Indictment.

16 Appendix A of the Indictment shows "the
17 principal matters and events upon which the prosecu-
18 tion will rely in support of the several Counts of
19 the Indictment in Group 1." Appendix B is a "list of
20 articles of treaties violated by Japan and incorpor-
21 ated in Groups 1 and 2." Appendix C is a "list of
22 official assurances violated by Japan and incorpor-
23 ated in Group 1." Appendix D sets out those incor-
24 porated in Group 3. Lastly, Appendix E gives a
25 "statement of individual responsibility for crimes

1 set out in the Indictment." Thus Appendix E enumer-
2 ates eleven positions which the accused HASHIMOTO
3 allegedly held during the period from 1928 to 1945.
4 Accordingly, we are going to show how each of these
5 charges is fundamentally mistaken.

6 1. Attached to the Army General Staff.

7 Appendix E alleges that HASHIMOTO was
8 "attached to the Army General Staff in 1933." How-
9 ever, no evidence has been offered to prove the fact.¹

10 As shown by HASHIMOTO's personal history,
11 on December 12, 1931, he was relegated to the 10th
12 Field Artillery Regiment, and on August 1, 1933, to
13 the 2nd Heavy Field Artillery Regiment. Therefore,
14 he was not at the General Staff in 1933. This sug-
15 gests the unreliability of the Indictment.

16 2. Retirement from the Army.

17 Appendix E states that HASHIMOTO retired
18 from the Army in February 1936. However, no evidence
19 has been offered to prove the fact. As shown by his
20 personal history, his retirement was in August and
21 not in February.² This is another illustration of
22 the inaccuracy of the Indictment.

23 3. Author of Declarations of HASHIMOTO,

- 24 1. Ex. 105, Tr. 699
25 2. Ex. 105, Tr. 699

Kingoro.

This point will be argued later in Chapter V, Detailed Argument Part.

4. Reentered the Army.

Concerning this point there is no mistake.

5. Commanded an Artillery Regiment at the Rape of Nanking.

Appendix E states that the accused HASHIMOTO "Commanded an Artillery Regiment at the Rape of Nanking."

However, no evidence has been introduced to sustain the charge. The affidavit of HASHIMOTO,¹ excerpts from his book "The Inevitability of Renovation"² and the affidavit of witness OBATA,³ minoru show that the accused HASHIMOTO was not in Nanking at the time of the Rape nor at any other time.

6. In Command of Japanese Forces which shelled the Ladybird and the Panay.

Appendix F states that HASHIMOTO was "in command of Japanese forces which shelled the Ladybird and the Panay." The Ladybird Incident will be argued later in Chapter II, Detailed Argument Part.

1. Ex. 3195, Tr. 28,796

2. Ex. 264, Tr. 3532

3. Ex. 3192, Tr. 28,772

Concerning the point that he commanded the Japanese forces that shelled the Panay, no evidence has been offered. His affidavit,⁴ his interrogation,⁵ the affidavit of witness OBATA, Minoru,⁶ and the Report of the U. S. Navy⁷ show that the leader of the Japanese forces that shelled the Panay was not the accused HASHIMOTO.

7. Author of a large number of books, articles in the magazine "Taiya Dai Nippon" and other publications and public speeches, all advocating aggressive warfare.

Appendix F states that the accused HASHIMOTO was "the author of a number of articles advocating aggressive warfare." However, there is not sufficient proof that his writings and speeches advocated aggressive war. This point will be argued at length in the Chapter V, Detailed Argument Part.

8. Member of a number of Societies for the Instigation of Army control over politics and furtherance of aggressive warfare.

Appendix E states: "He was a member of Societies for the instigation of army control over politics and furtherance of aggressive warfare."

- | | |
|-------------------------|-------------------------|
| 4. Ex. 3195, Tr. 28,796 | 6. Ex. 3192, Tr. 28,772 |
| 5. Ex. 238, Tr. 3466 | 7. Ex. 263, Tr. 35,117 |

1 However, the prosecution has failed to prove the
2 charge. This point will be argued in detail in
3 Section 1, Chapter I and Chapter IV, Detailed Argu-
4 ment Part, which deal with the societies to which
5 he belonged.

6 9. Promoter of a number of plots designed
7 to remove politicians and officers whom he did not
8 consider sufficiently aggressive.

9 Appendix E states: "He was the promoter of
10 a number of plots designed to remove politicians and
11 officers whom he did not consider sufficiently
12 aggressive." However, the prosecution has failed to
13 prove this point. For contrary to its expectation,
14 the evidence has shown that the March and the Oc-
15 tober Incidents were nothing more than internal
16 movements. This point will also be argued in Chapter
17 I, Detailed Argument Part.

18 10. Founder of the IRAA.

19 Appendix F states: "He was one of the
20 founders of the Imperial Rule Assistance Association."
21 But, it is not true. Mr. GOTO, a prosecution wit-
22 ness, testified that the sole founder of the Associ-
23 ation was Prince KONOYE. He stated as follows
24 (page 1668):
25

"... Prince KONOYE's ideal was to form an

1 organization with which all strata of the Japanese
2 people could be in agreement; that is to say, whether
3 they may be businessmen, politicians, educators, or
4 government officials -- of course, they would have
5 different political ideologies and different political
6 opinion, but this organization was to have
7 something with which all these people would feel
8 they had something in common."

9 11. Elected to the Lower House of the
10 Diet.

11 Appendix E states: "He was elected to the
12 Lower House of the Diet in 1942." This is quite
13 right.

14 But we contend that the following facts
15 which Appendix A refers to as events of major importance
16 in 1942 have nothing to do with his membership
17 in the Diet:

18 a. Participation in and assistance to un-
19 lawful traffic in narcotics.

20 b. Conclusion of Japan-Germany-Italy
21 military Alliance.

22 c. Aggression in the Netherlands East
23 Indies.

24 8. Ex. Tr. 1668
25

1 d. Aggression in Portugese Timor.

2 The accused HASHIMOTO has no responsibility
3 for these events in his capacity as member of the
4 Lower House.

5 As is clear from the above, the accused
6 HASHIMOTO has no connection with any of the charges
7 set out in the Indictment and its Appendices.

8 Concerning the facts which the prosecution
9 erroneously considers to be connected with HASHI-
10 MOTO a more detailed argument will be made in the
11 Detailed Argument Part. In this way his guiltlessness
12 will be shown beyond any reasonable doubt.
13

14 CHAPTER IV

15 Refutation To Prosecution's Summation.

16 After finishing the writing of HASHIMOTO's
17 summation, we received the prosecution's summation
18 for HASHIMOTO. Considering the difficulties in
19 translation and processing, it was impossible to
20 write an entirely new summation over again. There-
21 fore, this chapter is devoted to an overall confuta-
22 tion of the argument, which will again be dealt with
23 more at length in the detailed argument part.
24
25

1. General Argument.

a. Conspiracy.

(1) In General Part -- 1-2 of its Argument the prosecution alleges as follows: "In the law of conspiracy it is not necessary to show that all parties took part at the beginning. It is enough merely to show that at the commencement of a conspiracy there was a common plan among two or more conspirators.... As evidence has shown, the conspiracy came into being as among certain army officers, in particular, among staff members of the Kwantung Army."

Furthermore, the Indictment shows in Count 1 that "all the defendants together with divers other persons, between 1 January 1928 and 2 September 1945, participated as leaders, organizers, instigators or accomplices in the formulation or execution of a common plan or conspiracy."

Be it so, however, with reference to the commencement of conspiracy, when, where, among whom and what would the prosecution attempt to allege as having been planned in common, a fact which is almost beyond our understanding.

In the general Part D-2 of its argument the prosecution contends as follows: "The conspiracy shall be analyzed an explanation given thereof in

1 four successive steps hereinafter: (1) its first step
2 in the conspiracy obtaining control of Manchuria ..."

3 Whereas, the D-15 explanation is given there-
4 to which is read: "The planning and execution of the
5 murder of Chang Tso-lin is of the utmost importance
6 in this case. In the first place, it is the first
7 overt act in the conspiracy to carry out the ob-
8 jective of the conspiracy."

9 To summarize what has been stated above,
10 it seems that the prosecution's observation is that
11 between 1 January 1928 and Chang's death by an
12 explosion on 3 June 1928, there existed a common
13 plan among officers of the Staff of the Kwantung
14 Army to obtain control of Manchuria. However, no
15 evidence has been shown to prove this matter.

16 The prosecution who alleged that it sufficed
17 merely to show that at the commencement of a conspir-
18 acy there existed a common plan among two or more
19 conspirators -- fails to show in evidence with re-
20 gard to the above respect that there ever was a
21 common plan among more than two people.

22 Hereupon, it cannot but be said that the
23 alleged commencement of a conspiracy is only the
24 prosecution's arbitrary view without support of
25 any evidence.

1 (1) The accused HASHIMOTO was on duty in
2 Turkey in 1928 (Ex. 105, Tr. 699), whereas he could
3 not have possibly participated in the commencement of
4 such conspiracy.

5 (2) In the General Part K-3 of its argu-
6 ment the prosecution alleges as follows: "No military
7 man in the field has been charged with the crimes
8 pertaining to aggressive war merely because he car-
9 ried out military operations during the course of
10 an aggressive war being pursued by his government."

11 The accused HASHIMOTO, as military attache
12 to the Japanese Embassy in Turkey, sent a report on
13 15 November 1929 entitled "Circumstances in Caucasus
14 and its use-value in the light of propaganda" to
15 Deputy Chief of Staff, OKAMOTO, Renishiro. This was
16 nothing more than the performance of his rightful
17 duties.² In April 1931, the accused HASHIMOTO stated
18 his views to the following purport at the meeting on
19 "Circumstantial judgment" sponsored by the 2nd Depart-
20 ment of the Army General Staff Office:
21

22 "The Army General Staff must suggest to
23 the government to assume a decisive attitude in order
24 to solve pending problems in Manchuria extending to
25 several hundreds."³ This was also the performance

2. Ex. 3195, Tr. 28,792-3 3. Ex. 3195,
Tr. 28,700, 28,809

of his duty within his rightful power as Russian Sub-
1 Section Chief, 2nd Department Army General Staff.

2 The accused HASHIMOTO, on 12 December 1937,
3 when firing at Chinese vessels at Wuhu, carrying Chin-
4 ese troops, shelled the British gunboat the "Lady-
5 bird" in mistake owing to the thick fog peculiar to
6 the Yangtzekiang. However, the accident was incurred
7 in consequence of his performance of unavoidable
8 duties by order of the Army Commander YAMAGAWA.

9 The foregoing three actions are not of the
10 sort as to be charged with crimes of aggressive war,
11 as alleged by the prosecution.
12

13 (3) In the General Part D-2 of its argument
14 the prosecution alleges as follows: "The conspiracy
15 shall be explained by analyzing it in four successive
16 steps hereinafter: (a) The first step in the con-
17 spiracy obtaining control of Manchuria; (b) the
18 expansion of control and domination from Manchuria
19 to all the rest of China; (c) the preparation of
20 Japan for aggressive war internally and by alliances
21 with Axis Powers; (d) the further expansion of the
22 conspiracy into the rest of East Asia and the Pacific
23 and Indian Oceans by further aggressive wars."

24 4. Ex. 3192, Tr. 28,769; Ex. 2577, Tr. 21,909;
25 Ex. 3195, Tr. 28,796; Ex. 3498, Tr. 33,833.

1 The accused HASHIMOTO, after three year's
 2 stay in Europe returned to Japan in 1930. The one
 3 and only fact he gave thought to, on his way back,
 4 was the method for renovation of Japan.⁵

5 The accused HASHIMOTO in 1930 organized the
 6 "Sakurakai," a study society with the view of national
 7 renovation. The "Sakurakai" had not in the least any-
 8 thing to do with such as other than its objective.⁶

9 The accused HASHIMOTO, in 1931, plotted the
 10 so-called March Incident but gave it up owing to General
 11 UGAKI's change of mind. The March Incident was purely
 12 a national renovation movement and had no connections
 13 whatsoever with the Manchurian Incident nor with
 14 other external affairs.⁷

15 The accused HASHIMOTO, again in 1931, devised
 16 the so-called "October Incident" but was detained from
 17 action on account of General ARAKI's reproof. The
 18 October Incident was purely a national renovation
 19 movement and had no connection at all with the Man-
 20 churian Incident nor with other external affairs.⁸

22 5. Ex. 734A, Tr. 7647

23 6. Ex. 183, Tr. 2188; Ex. 2424, Tr. 19,666;
 Ex. 3195, Tr. 28,793.

24 7. Ex. 3195, Tr. 28,793-4; Ex. 3375, Tr. 32,209;
 Ex. 2424, Tr. 19,668, 1627, 1628, 28,810, 1423,
 1411.

25 8. Ex. 3195, Tr. 28,795; Ex. 2424, Tr. 19,667-8;
 Ex. 3375, Tr. 32,213-4; Ex. 2584, 22117, 30323.

1 Thus, reflecting upon what has been stated,
2 there is not even a single act in all of those com-
3 mitted by the accused HASHIMOTO up to October 1930,
4 that comes under the category defined by the prose-
5 cution as conspiracy in the General Part D-2 of its
6 argument.

7 In other words, there exists no reason that
8 the defendant HASHIMOTO is chargeable with crimes of
9 aggressive war merely on the ground that he was con-
10 cerned in the Sakurakai, the March and the October
11 Incidents.

12 (4) In the General Part K-5 of its argument
13 the prosecution alleges as follows: "Although all of
14 the defendants are criminally responsible as formula-
15 tors of Japan's aggressive policies, the liabilities
16 of the individual defendants for any particular act
17 do not all rest on the same basis. . . . (3) those
18 defendants, who, although they had no duty or re-
19 sponsibility fixed by the law of Japan, have by their
20 acts and statement placed themselves on the policy-
21 making level and are therefore chargeable with respon-
22 sibility in fact."
23

24 Furthermore, in the General Part K-10 of its
25 argument the prosecution roughly classifies those coming
under the preceding clause (3) into two groups.

1 Group (1) "includes those governmental officials who
2 although not entrusted with policy-making power and
3 not subject to its concomitant responsibility, use
4 their office and their relation with their policy-
5 making superiors and colleagues to influence the
6 decision and action of those entrusted with the
7 power." ---- Group (2) "includes many persons not
8 officially connected with the government, such as
9 pressure groups and the trusted confidants of the
10 responsible official, who use their power to in-
11 fluence those with responsibility to make a decision
12 in a certain way."

13 After dividing them into two groups as stated
14 above, the prosecution gives the following explana-
15 tion: "It must also be remembered that few decisions
16 made by those ultimately in power are made without
17 the pressure of these governmentally non-responsible
18 individuals and groups. These people are more often
19 than not the real initiators of the policy ultimately
20 adopted by those in power, and it is their demands and
21 arguments, and unfortunately sometimes their threats,
22 unlawful inducements and acts of unlawful force which
23 bring about the adoption of a specific policy. In so
24 exercising their power and influence, they are par-
25 ticipating in the formulation of a national policy

1 and share in fact the responsibility for its adoption.
2 If the act they advocate and succeed in having exe-
3 cuted is a crime, they are liable for that crime
4 at least as instigators and accomplices."

5 The accused HASHIMOTO retired from military
6 service in August 1936 and became an ordinary civilian.
7 In August 1937 he was recalled to the active service
8 but left the service again in April 1939, when he
9 was discharged and returned to a civilian life. The
10 accused HASHIMOTO did never assume any official post,
11 during the above-mentioned two periods, except that
12 in the active service.
9

13 Therefore, he never was, and no evidence to
14 that effect having been mentioned, one of those
15 "Governmental officials who use their office and
16 their relations with their policy-making superiors
17 and colleagues to influence the decision and action
18 of those entrusted with the power."

19 The accused HASHIMOTO has been a member of
20 two or three societies. However, as a single member
21 of the society, he, no more than the said societies,
22 never exercised power to influence those with respon-
23 sibility, whereby no such evidence has been produced
24 by the prosecution. Therefore, the accused does
25 9. Ex. 3195, p. 28791 Ex. 105, p. 699.

1 not come to be included in "pressure groups who use
2 their power to influence those with responsibility
3 to make a decision," nor is he one of "the trusted
4 confidants of the responsible official."¹⁰

5 Be it so then, there exists no reasonable
6 ground for including the accused HASHIMOTO in the
7 instigators and accomplices as alleged by the prose-
8 cution in the General Part K-10 of its argument.

9 (5) In the General Part K-1 of its argument
10 the prosecution divides the defendants into 7 cate-
11 gories including Prime Minister^{ship} and others.
12 Among them what we can reasonably conjecture is that
13 the accused's possibly being included in two categor-
14 ies, in one as "Army officer in the field" and the
15 other as a "Propagandist." The accused HASHIMOTO had
16 been an "army officer in the field" for an extremely
17 short period, during which time, however, he had no
18 more than been a military man observant to orders of
19 superiors. He did not ever commit crime of murder,
20 conventional war crimes, or any of those against
21 humanity.¹¹
22

23 Therefore, the accused is not chargeable
24 with punishment for the reason that he was an "army
25 officer in the field."

10. Ex. 3195, Tr. 28,791.

11. Ex. 3195, Tr. 28,796-7; Ex. 3192, Tr. 28,772.

1 The accused HASHIMOTO, during the period from
2 1936 to 1942, excepting that while he was being called
3 to service, had published 4 kinds of books, wrote
4 articles and delivered several speeches. However,
5 these were all made in his capacity as a plain
6 civilian, and not in the least in communication with
7 any other person.¹²

8 The accused HASHIMOTO, in accordance with
9 the freedom of speech and publication as assured by
10 Article 29 of the Japanese Constitution, made public
11 personal views of his own. The assurance of freedom
12 of speech and publication is known to be widely estab-
13 lished in a great number of countries as well as in
14 Japan. Such could respectively be found in the
15 United States Constitution; Amended Article 1,
16 Articles 10 and 11 of the French Declaration of Human
17 Rights; Article 14 of the USSR Constitution; Article
18 7 of the Netherlands Constitution; and Article 11 of
19 the Chinese Constitution.
20

21 I skip the next paragraph.

22 In order to charge the accused HASHIMOTO with
23 being a party to the conspiracy as a propagandist, it
24 is necessary to prove the fact that he acted in commun-
25 ication with the rest of the conspirators. However,

12. Ex. 3195, Tr. 28,791-2; Ex. 3193, Tr. 28,786.

1 the prosecution has failed to show any proof with
2 reference to the above mentioned communication of
3 ideas. In fact, it is impossible to prove such fact,
4 since in his case views were published individually
5 and utterly free from any communication as has been
6 stated in the foregoing. In other words, the accused
7 HASHIMOTO as a "propagandist" is also unchargeable
8 with the responsibility for taking part in the alleged
9 aggressive war.

10 (6) The prosecution's argument does not,
11 any of its part, consider actions by mistake, meetings
12 of amity and irrelevant items as crimes. In so much
13 as stated above, it can hardly be admitted that the
14 accused HASHIMOTO was a participator in the conspiracy
15 for aggressive war, with reference to the Ladybird
16 Incident, the Berlin Talk, and the Manchurian Inci-
17 dent.
18

19 ' b. Misinterpretation of evidence and
20 Misconception of facts.

21 (1) In General Part-D of its argument the
22 prosecution alleges that "according to TANAKA, Ryu-
23 kichi's statement CHO told TANAKA that one of the aims
24 of the establishment of this association (i.e. the
25 Sakurakai) was the solution of the Manchurian prob-
len" and cites page 1963 of the TR as evidence.

1 According to the above evidence, however,
2 what CHO told TANAKA was merely that "the Manchurian
3 problem was taken up as a subject for discussion."
4 It does not show that its "solution was one of the
5 aims for which the association was established." No
6 doubt the prosecution is distorting the evidence.

7 (2) In General Part-D of its argument the
8 prosecution further alleges that "according to a
9 report of the Home Ministry, by 1930 this association
10 (i.e. the Sakurakai) had reached the conclusion that
11 national reform was necessary for the positive solu-
12 tion of the Manchurian-Mongolian problem," and cites
13 exhibit No. 183 as evidence.

14 According to the above evidence, what the
15 prosecution is citing as a personal and conjectural
16 opinion of Mr. TANAKA, Kiyoshi, which forms a part
17 of the report of the Home Ministry. Moreover, the
18 association referred to there is not the Sakurakai at
19 all but a group of some members of the Second Division
20 of the Army General Staff. Here again the prosecution
21 is distorting the evidence.

22 (3) In General Part-D of its argument the
23 prosecution alleges that "if the conspirators could
24 secure political power, they would be able to do any-
25 thing they wanted free from any restriction. There-

~~fore the conspirators formulated and initiated a~~
1 plan to secure political power in their hands."

2 This however is nothing more than a mere
3 conjecture which is not confirmed by evidence. No-
4 body is warranted to pervert a fact by mere con-
5 jecture.

6 (4) In General Part-D of its argument the
7 prosecution alleges that "HASHIMOTO mentioned on
8 examination also the name of NAGATA as a conspirator."
9 According to the above evidence, however, it is not
10 clear whether or not NAGATA was one.

11 (5) In General Part-D of its argument the
12 prosecution alleges that "the fact that there was a
13 plot and that in this plot HASHIMOTO played an import-
14 ant part was well known to KIDO as well as a group of
15 people encircling the Throne," and cites exhibit 179G,
16 page 1931 as evidence thereof.

17 However, the above source is based upon
18 a rumor which the accused KIDO heard from Mr. HARADA.
19 Therefore, it is clear that the allegation that such
20 facts were well known to a group of people encircling
21 the Throne is not based on evidence.

22 (6) In General Part-D of its Argument the
23 prosecution alleges that "OKAWA stated in his testi-
24 mony before the Tribunal that the Manchurian Incident
25

1 gave birth to the "March Incident" and cites (blank)

2 However, what is referred to in the above
3 evidence is not the "March Incident" but the "Man-
4 churian problem." This is another distortion of
5 evidence.

6 (7) In General Part-D of its Argument the
7 prosecution alleges that "in the fall of 1934 HASHIMOTO
8 told him (TANAKA, Ryukichi) about the "manchurian Inci-
9 dent" and cites Tr. p. 1968-1978 as evidence.

10 However HASHIMOTO never met Mr. TANAKA in
11 the fall of 1934, as has been clearly testified to
12 by witness SUZUKI Kyo as well as by the accused
13 HASHIMOTO himself.¹³

14 Reference will again be made to this point in
15 Section 5, Chapter I of the Detailed Argument Part,
16 which deals with the Mukden Incident.

17 (8) In General Part-D of its Argument the
18 prosecution alleges that "Captain CHO told TANAKA
19 about the Manchurian Incident," and cites Tr. p. 2013-
20 2014 and 2017 as evidence thereof.

21 However, at the time the Mukden Incident broke
22 out Captain CHO was not in Tokyo nor in Manchuria but
23 in Peking (Ex. 3195, p. 28,793). Therefore, General
24 13. Ex. 3195, Tr. 28,795; Ex. 3194, Tr. 28,788-9
25 12-A. Ex. 2177A, Tr. 15,578

1 TANAKA's testimony is hearsay of hearsay, entirely
2 lacking in probative value.

3 (9) In General Part-D of its Argument the
4 prosecution alleges that "In 1934 OKAWA told TANAKA
5 that the incident of September 18 was the result of
6 his plan and that he was satisfied that a similar
7 plan had been prepared and was being carried out by
8 the Kwantung Army," and cites Tr. p. 1980-1984 as
9 evidence thereof.

10 However, on cross-examination by the defense
11 counsel, General TANAKA reversed and corrected his
12 above statement and said that "I never heard OKAWA
13 talking about the Manchurian Incident."¹⁴ Since the
14 correction was made we must rely on the corrected
15 statement.

16 (10) In General Part-D of its Argument the
17 prosecution alleges that "In 1931 SHIGETO and HASHI-
18 MOTO told witness FUJITA that active steps should be
19 taken in Manchuria" and cites Ex. 160, p. 1464 as evi-
20 dence thereof.

21 However, on cross-examination by the defense
22 counsel witness FUJITA admitted that his recollection
23 was not certain as to the above point.¹⁵

24 14. Tr. 2165

25 15. Tr. 1468-1471

1 (11) In General Part-D of its Argument the
2 prosecution alleges that "In October the conspirators,
3 unsatisfied with the policy of the Government which
4 they considered unfavorable for the execution of
5 their conspiracy, formulated another plan to secure
6 domination over the Government" and cites Exhibit
7 3195, p. 28,795.

8 However, exhibit 3195 just states that "for
9 the sake of an internal reform of the nation . . ."
10 and nothing more. The prosecution's contention is
11 due to a distortion of evidence.

12 (12) In General Part-D of its Argument the
13 prosecution alleges that "In his testimony in the
14 Tokyo Court of Appeal OKAWA stated that the WAKATSUKI
15 Cabinet was lukewarm in attitude and that the object
16 of this incident consisted in organizing a new
17 political party which would be powerful enough to
18 pull down this Cabinet and to solve important prob-
19 lems of the time" and cites exhibit 2177A, p. 15,585-7
20 as evidence thereof. In confutation of the accused
21 HASHIMOTO's statement as well as witness WACHI's
22 testimony that "Dr. OKAWA did not participate in the
23 October Incident," the prosecution further alleges
24 that "this evidence seems to be a belated trick by
25 ~~which OKAWA attempts to avail himself of his present~~

mental state, whether feigned or unfeigned."

1 However, as is obvious from exhibit No. 2177A,
2 page 15,585, Mr. OKAWA does not say "the October
3 Incident was aimed at pulling down the WAKATSUKI
4 Cabinet." He says that "The Cabinet which was in
5 power at the time of the Mukden Incident was the
6 SHIDEHARA Interim Cabinet and the October Incident
7 was aimed at pulling down this Cabinet."
8

9 Had Mr. OKAWA taken part in the October
10 Incident he would not have mistaken the cabinet that
11 to be pulled down for the SHIDEHARA Interim Cabinet.
12 This proves that Mr. OKAWA took no part in the Oc-
13 tober Incident and that as early as at the time of
14 the above trial he was already in a morbid mental
15 state.

16 The prosecution, however, has wilfully dis-
17 torted the keypoint of exhibit 2177A and alleges that
18 the evidence showed that the Incident was aimed at
19 pulling down the WAKATSUKI Cabinet. Nothing could
20 be more absurd.

21 It is a matter for regret that the prosecu-
22 tion tries to incriminate the accused even by dis-
23 torting evidence.
24

25 (13) In General Part-D of its Argument the
prosecution refers to "information which Mr. TANAKA

1 got from Messrs. CHO and TATEKAWA concerning the
2 October Incident."

3 This is hearsay which is entirely devoid of
4 probative value and which General TANAKA got from
5 Messrs. CHO and TATEKAWA, both of whom are now dead
6 and cannot be summoned to testify. It has already
7 been shown (Chapter IV, b, (7)) that General TANAKA
8 is a skillful inventor of stories.

9 (14) In General Part-E of its Argument the
10 prosecution alleges that on December 11, 1937 in the
11 course of an anti-China blockade a Japanese artillery
12 troop, commanded by the accused HASHIMOTO, shelled
13 the Ladybird, British gunboat, and cites exhibit 258,
14 page 3466-7 as well as exhibit No. 2188, page 15,678
15 as evidence.

16 In General Part-G of its Argument the
17 prosecution further alleges that they shelled the
18 Panay and the Ladybird as well as other vessels.

19 There is, however, nothing in the above
20 evidence that supports the allegation that the act
21 was committed in the course of an anti-China block-
22 ade.
23

24 Further, the prosecution seems to have for-
25 gotten that we have proven that the shelling of the
Ladybird was an error due to thick fog. Reference

1 will again be made to this point in Chapter II, Sec.
2 2 of the Detailed Argument Part.

3 (15) In General Part-F of its Argument the
4 prosecution alleges that it has examined the part
5 which the Sakurakai played in connection with the
6 actions taken in Manchuria.

7 However, the prosecution has offered nothing
8 to support this point. In connection with the
9 actions taken in Manchuria the Sakurakai played no
10 part whatever. Therefore, it is quite natural that
11 the prosecution has failed to offer evidence.

12 Therefore, the above allegation of the
13 prosecution is nothing more than a mere conjecture.

14 (16) In General Part-F of its Argument
15 the prosecution alleges that the Army's plan of
16 1936 for propaganda and the use of spies provided
17 so as to facilitate the suppression of objection
18 to the government propaganda, and cites exhibit No.
19 161, page 1245-1251 as evidence. It further adds
20 that in accordance with this part of the plan the
21 Imperial Rule Assistance Association was organized
22 on October 10, 1940, and cites Tr. p. 1642.

23 However, as is obvious at first sight
24 exhibit No. 151 is a mere general plan drafted by
25 the Planning Section of the Natural Resources Bureau.

1 There is no proof that this plan was put into prac-
2 tice in its original form. Further, although, it is
3 true, the date of the organization of the Imperial
4 Rule Assistance Association is mentioned on page
5 1642 of the Court Record, there is no proof that
6 this association was organized in accordance with the
7 Draft General Plan prepared by the Planning Section
8 of the Natural Resources Bureau.

9 In short, this allegation is also a mere
10 conjectural statement unsupported by evidence.

11 (17) In General Part-H the prosecution
12 states on "HASHIMOTO's thesis on the Greater East
13 Asia Co-Prosperity Sphere."

14 On this point, we shall touch upon in Sec.
15 22, Chapter V, Detailed Argument Part.

16 (18) In General Part-H the prosecution in-
17 sists that defendant HASHIMOTO admitted the fact that
18 the destructive move against the Soviet Union had
19 been discussed at the Berlin Talk, but the prosecu-
20 tion gave no evidence. On the contrary, defendant
21 HASHIMOTO answers that he has no such memory.¹⁶ The
22 prosecution has misinterpreted the evidence.
23

24 16. Tr. 28,799-28,800.
25 Tr. 28,839-28,840.

1 (19) In General Part-H the prosecution
2 asserts, "HASHIMOTO was ready to take the most
3 scandalous measure of the strategical and destructive
4 deeds and he was always a thoroughgoing and atrocious
5 enemy to the Soviet Union. That is to say, the
6 role as the principal propagandist of the theory
7 of the mutual hatred between races aimed at the
8 occupation of other nations' territories and the
9 massacre of the people there was his specialty," but
10 there is no evidence produced for it. The prosecu-
11 tion blames defendant HASHIMOTO for using violent
12 words. We firmly contend that non-evidence statements
13 are nothing but the prosecution's opinion.
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2. Matters pertaining to HASHIMOTO.

(a) Berlin Talk.

The prosecution's summation in CC-14 asserts that in April, 1929 defendant HASHIMOTO participated in the conference held at Berlin and he proposed that Mr. Trotzky and his sixty comrades who had been residing in Turkey could be utilized for intelligence, and that in case good spies were found, you had to buy information from them at any cost, and thus it quoted transcript 7658, exhibit 722; and transcript 33,889. Exhibit 732 is a document called "Matters Concerning Russia, Submitted by Conference of Military and Naval Officers in Europe" and the prosecutor states that defendant MATSUI affirmed this fact.¹ But defendant MATSUI denies this fact² and, moreover, he testifies to the effect that there is no fact whatsoever that he exchanged such talks nor he formed such a document.³ Defendant HASHIMOTO also makes the same testimony.⁴

In exhibit 732-A there is no such detailed fact as the prosecution asserts and also in the evidence produced by the prosecution. There exists no testimony whatsoever of the proposal which defendant HASHIMOTO is

1. T. 7639

2. Ex. 3498, T. 33,828

3. Ex. 3498, T. 33,827, 33,028. T. 33,887, 33,889, 33,890.

4. T. 28,800

1 said to have made, as the prosecution asserts. The
2 prosecution attempts to recognize the fact, basing on
3 no evidence at all. This is a very rash practice. In
4 regard to this point, we again shall take it up in
5 Section 2, Chapter 3, Detailed Argument Part.

6 b. Caucasus Report.

7 The Caucasus Report is taken up in CC-15
8 of the prosecution summation. Concerning this point
9 we shall state in detail in Section 1, Chapter III,
10 Detailed Argument Part.

11 c. Exhibit No. 177.

12 In the summation CC-16 the prosecution avers
13 that "HASHIMOTO contemplated a plan of Japan's reformation
14 on his way home from Europe and therefore he
15 planned a few methods to carry out his plan as soon
16 as he returned to his post in the Army General Staff.
17 Perhaps he may not say that the following results were
18 produced by these plans, only but as a matter of fact
19 the Manchurian Incident and other incidents broke out
20 one after another." And for this evidence it gave
21 exhibit 177, T. 1,918 - 1921. However, above is
22 misinterpretation of the evidence. "That defendant
23 HASHIMOTO contemplated en route to Japan from Europe
24 is only the "plan of the Internal Reformation" as
25 the prosecution asserts, and what he projected after

1 returning home is also nothing but this "the Plan of
2 Internal Reformation." In spite of this, the various
3 affairs such as the Manchurian Incident, the Secession
4 from the League of Nations, etc., occurred successively
5 later. This is why defendant HASHIMOTO, in his book,
6 stated to the effect that it could not be said that the
7 successive outbreaks of the above various affairs had
8 been brought about as a result of his project on the
9 internal reformation, but there had been other reasons.
10 The prosecution, however, attempted to interpret this
11 sentence in such a way as the various affairs like the
12 Manchurian Incident and others had occurred due to
13 defendant HASHIMOTO's project. It is misinterpretation
14 of the evidence to judge merely through reading the
15 statement of exhibit 177 that defendant HASHIMOTO
16 planned and conspired on the external affairs like
17 the Manchurian Incident and others.

18 d. KIDO Diary and TANAKA's Testimony.

19 CC-17 of the prosecution summation states
20 that "KIDO records in his Diary on 7 August 1931 that
21 HASHIMOTO and SHIGEFUJI backed a group of recent
22 graduates from the Army Staff College in the study of
23 Manchurian and Mongolian problems. These problems
24 centered about the creation of a new regime, following
25 the killing of Marshal Chang Tso-lin, by getting rid
of the war lords in Manchuria and separating Manchuria

1 from the Nanking government." As evidence for it, it
2 quoted exhibit 179-A to -R. The said KIDO Diary of
3 August 7 was hearsay and was learned from Mr. HARADA.⁵
4 Defendant HASHIMOTO has testified that there was no
5 such fact.⁶

6 Next, as can immediately be made out if one
7 examines the KIDO Diary of October 15th⁷ saying
8 "Military circles are intending to set up a new regime
9 in Manchuria . . ." the fact that is written into the
10 said Diary is that which is entered as a hypothetic
11 personal opinion of a petty official called HAYASHI,
12 as he heard it. Besides, in the above opinion we can
13 find no description at all of the incident of Chang
14 Tso-lin's death by bomb explosion and of the Nanking
15 Regime. Not to say anything about defendant HASHIMOTO
16 or the Sakurakai, nothing notable is being described.
17 In view of these facts the prosecution is reasoning
18 as if there were facts, fabricating a hearsay of an
19 information broker, a hypothetical opinion of a petty
20 official and matters without any attestation.

21 Further, in CC-17 of the summation, the
22 prosecution avers that "... the Japanese army took a

23 5. Ex. 179-C, T. 1926

24 6. Ex. 3195, T. 28,793

25 7. Ex. 179-R, T. 1,942

1 strong attitude ... and took the stand that armed
2 force should be resorted to in driving out the
3 Chinese forces and setting up a new regime under
4 Japanese control. Strong advocates of this procedure
5 were HASHIMOTO and Captain CHO, Isamu." And it cites
6 transcript 1960 for it. However, the above is TANAKA,
7 Ryukichi's opinion and no concrete fact has been given
8 for it. That TANAKA's testimony is worthless will be
9 dealt with later in Section 5, Chapter I, Detailed
10 Argument Part.

11 e. The purposes of Sakurakai.

12 In CC-18 the prosecution avers that "... the
13 purpose of the Sakurakai was ... to carry out an
14 internal revolution or renovation and to settle the
15 Manchurian problem ..." and has cited transcript page
16 1963. This is, however, said to be what General
17 TANAKA, Ryukichi had heard from the deceased Captain
18 CHO. We shall later give that General TANAKA's testimony
19 as worthless.

20 And, further it avers that in CC-18 "... These
21 purposes dovetailed into the plans of the army, which
22 desired a settlement of the Manchurian problem, bring
23 Manchuria under Japanese control, and, if harmony and
24 cooperation could be realized, to use this as a basis
25 for eventually freeing Asia from white domination and

bring about the ideal of Asia for the Asiatics,"
1 and cites exhibit 183. However, the evidence for the
2 assertion is what Mr. TANAKA, Ryukichi testified he
3 heard from defendant ITAGAKI at Port Arthur in June
4 1930, and the transcription of Mr. TANAKA, Kiyoshi's
5 opinion. Defendant ITAGAKI has testified that he
6 had nothing to do with the Sakurakai and defendant
7 HASHIMOTO, and never met Mr. TANAKA, Ryukichi at Port
8 Arthur in June 1930.⁸ We shall give this in section 1,
9 Chapter I, Detailed Argument Part. Mr. TANAKA, Kiyoshi's
10 opinion is dogmatic and has no value.

11 Furthermore, the prosecution summation insists
12 in CC-18 that "... such renovation was to be carried
13 out by a 'grand coup d'etat', by overthrowing the govern-
14 ment and then setting up a new and renovated government
15 to cleanse politics and political administration, as
16 well as rally public opinion and efforts of the people
17 toward settlement of the Manchurian problem." It cites
18 transcript 1982 and 1983.

19
20 However, the above is the testimony said to be
21 what General TANAKA, Ryukichi heard from insane Mr.
22 OKAWA. We shall later give the reason of worthlessness
23 of General TANAKA's testimony.

24 And further states that "... The navy also had

25 8. Tr. 30,324

1 several officers active in its affairs." It gave T.
2 1962 for it. As the fact shows clearly, it is an
3 opinion of General TANAKA. The opinion is not the
4 evidence.

5 f. Testimony of Mr. FUJITA, Isamu.

6 In CC-19 the prosecution gives concerning
7 affidavit and testimony of Mr. FUJITA, Isamu. In Section
8 1-b, Chapter IV of the General Argument Part, we have
9 given that FUJITA's testimony is not correct.

10 g. Leading Members of the Sakurakai.

11 In CC-20 the prosecution states that "... the
12 purposes and objects of the Sakurakai were put to prac-
13 tical use in effecting one of its primary objects,
14 namely, the solution of the Manchurian problem, and in
15 this HASHIMOTO has a leading part . . . in movements
16 for renovation of the government and by their stimula-
17 tion and direction of a military-political movement in
18 Manchuria, which ultimately led to international con-
19 demnation of Japan by the League of Nations." It cites
20 exhibit 157, T. 1402-3.

21 However, such description as cited by the
22 prosecution does not exist in either exhibit 157
23 nor transcript 1402-3. Besides the prosecution witness
24 Mr. SHIMIZU, Yukino has made a testimony quite contrary
25 to the prosecution, saying, "... It is a fact that the

1 March Incident was a completely internal reformation
2 problem and there was not involved any meaning of invas-
3 ion at all..."⁹ This is another distortion of the
4 evidence by the prosecution.

5 h. The March Incident.

6 In CC-21 the prosecution takes up the March
7 Incident, and in CC-22 discusses the "dummy bombs".
8 As we have stated, the March Incident was a pure
9 internal political movement. This will be taken up
10 in detail in Section 2, Chapter I, Detailed Argument
11 Part.

12 i. The Mukden Incident.

13 In CC-23 the prosecution cites General TANAKA's
14 testimony and says that HASHIMOTO had relation with the
15 Manchurian Incident. We shall explain in detail in
16 Section 5, Chapter V, Detailed Argument Part, that
17 General TANAKA is telling a fabrication and that
18 defendant HASHIMOTO had nothing to do with the Manchur-
19 ian Incident.

20 j. The October Incident.

21 In CC-24 of the summation the prosecution cites,
22 among others, exhibit 2777-A, T. 15,585-7, transcript
23 2013 and T. 1973 for the October Incident. In referring
24 to exhibit 2177-A, T. 155,585-7, the prosecution alleges
25

1 that OKAWA remarked that the objective of the October
2 Incident was the overthrow of the WAKATSUKI Cabinet.

3 If your Honors please, we would like to call
4 your attention to line 5 and to lines 22 to 24 in the
5 transcript, page 15,585, where appears OKAWA's state-
6 ment saying that, "... The Cabinet at that time, as
7 you know, was the SHIDEHARA Interim Cabinet ... the aim
8 of the October Incident was, generally speaking, to
9 crush them ..." If OKAWA had been one of the partic-
10 ipants in the October Incident he should have known
11 that the subversion of the WAKATSUKI Cabinet was the
12 aim of the Incident, instead of the SHIDEHARA Interim
13 Cabinet. In actuality, he was in error when he made
14 such a statement. This is immovable evidence for the
15 fact that OKAWA had no concern with the October Incident.
16 Then, why did he say so? The sole answer is: he was
17 just insane. If not, whether he took part in the
18 Incident or not, he would not have made such an error
19 in such a well-known fact. It was indeed a natural
20 course for him because he later became and was diagnosed
21 as a lunatic.

22 The prosecution, intentionally changing his
23 words, alleges that the Incident aimed at the overthrow
24 of the WAKATSUKI Cabinet, thus attempting to make
25 OKAWA's statement as reasonable as possible in the
situation at the time of the Incident. We can not under-

1 stand why the prosecution has to distort the evidence
2 and make desperate efforts to connect defendant HASHI-
3 MOTO with the Mukden Incident. We are astonished to
4 discover that the evidence of the prosecution for its
5 case is so weak.

6 The testimony of witness TANAKA, Ryukichi
7 which appears in transcript 2013 is based on his inform-
8 ation heard from the late Lieutenant General TATEKAWA.
9 His testimony appearing in transcript 1973 is also
10 what he heard from the deceased Captain CHO. As to the
11 worthlessness of these testimonies, we shall take them
12 up later collectively.

13 k. The Ladvbird Incident.

14 The prosecution refers to the Ladvbird Incident
15 in CC-26 of its summation, and cites exhibits 2521, 2522,
16 and 2523 as evidence.

17 None of these exhibits has any concern with
18 the Incident of the Ladvbird, although they are related
19 to that of the Panay.

20 The argument of the prosecution emphasizes
21 that the Ladvbird Incident occurred not by accident.
22 In our submission this is the misinterpretation of
23 evidence on the part of the prosecution. Concerning
24 the Ladvbird Incident, we shall take it up in detail
25 in Section 2, Chapter II, Detailed Argument Part.

1 1. Books, Articles and Speeches by
2 the Accused HASHIMOTO.

3 In the prosecution summation at CC-27, CC-28,
4 CC-29, CC-30, CC-31 and CC-32, the books, articles and
5 speeches by the accused HASHIMOTO are referred to. We
6 shall take up this point in detail under Sections 1, 2,
7 and 3, Chapter V, Detailed Argument Part.

8 n. Associations.

9 In the prosecution summation at CC-33 and CC-34
10 the Associations with which HASHIMOTO was connected are
11 referred to. This point will be taken up in detail in
12 Sections 1, 2, 4, and 5, Chapter IV, Detailed Argument
13 Part.

14 n. Revision is not Perjury.

15 In CC-35 the prosecution alleges that "HASHIMOTO
16 perjured himself when questioned by one of the prosecu-
17 tors prior to trial", and cites transcript 15,682-15,686.
18 However, in careful reading of the said evidence it will
19 show the accused HASHIMOTO has not perjured himself.
20 Being shown his own writings, the accused HASHIMOTO
21 was reminded of his ambiguity in his answer, which was
22 given previously when questioned, and he therefore
23 revised it.

24 o. No Evidence is Shown for the
25 Conclusion of the Summation.

 In the summation, CC-36, the following passage

1 is found, "...It can be said that HASHIMOTO directed
2 public opinion to violate such treaties, agreements
3 and assurances, and that his previous conduct fitted
4 into the character he assumed as one of the conspir-
5 ators to wage unlawful wars of aggression for the
6 purpose of military, naval, political and economic
7 domination by Japan."

8 But no evidence for this has been tendered.
9 This is only the prosecution's dogmatic opinion.

10 THE PRESIDENT: We will recess for fifteen
11 minutes.

12 (Whereupon, at 1445, a recess was
13 taken until 1500, after which the proceedings
14 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. HAYASHI.

4 MR. HAYASHI: Proceeding from the bottom of
5 page 66.

6 p. It is not Murder.

7 The Summation CC-38 cites the transcript,
8 page 28,772, and charges HASHIMOTO guilty of murder
9 as follows:

10 "The testimony of the defense witness, OBATA,
11 further shows that HASHIMOTO was guilty of murder, as
12 appears from the following:

13 "'14. Since one death had resulted from the
14 shelling, the Captain of the British ship asked us to
15 attend the funeral service. We sent one representa-
16 tive to this funeral service. This was held at the
17 public hall.'"

18 As has been proven, the shelling of the
19 Ladybird was through a mistake due to a dense fog.
20 Therefore, though one death resulted, it is not proper
21 to charge him as guilty of murder. A full account of
22 the Ladybird Incident, which happened by mistake, is
23 taken up in Section 2, Chapter II, Detailed Argument
24 Part.

25 q. Atrocities.

1 In the summation CC-43 the prosecution asserts
2 as follows: "... relating to murder and mistreat-
3 ment of POW and civilians . . . it can only be said
4 that by his inflammatory language in the incitement
5 of violence to bring about the much desired victory,
6 cruelty can well be said to be a by-product of the
7 campaign. . ." and cites no evidence for it. Again
8 this is nothing but the prosecution's dogmatic opinion.

9 3. Matters pertaining to other Defendants.

10 a. The accused ARAKI.

11 In its argument against the accused ARAKI
12 the prosecution alleges that this plot (the October
13 Incident) was aimed at pulling down the WAKATSUKI
14 Cabinet as well as establishing a new government
15 which would support the Manchurian Incident and cites
16 as evidence Court Record page 2012.

17 However, the above source is a statement of
18 General TANAKA, Ryukichi, who is, as has been shown
19 on many occasions, a notorious story teller. More-
20 over, this is based on hearsay from Mr. TATEKAWA,
21 who is dead. Therefore, this source is no doubt
22 entirely devoid of any probative value.

23 b. The Accused HIROTA.

24 (1) In its argument against the accused
25 HIROTA the prosecution alleges that HASHIMOTO, Kingoro

1 admitted that, at the order of General YANAGAWA, he
2 shelled the Ladybird and captured the same vessel while
3 on her way to the rescue of the Panay and cites as
4 evidence exhibit No. 258 and Court Record page 3466
5 as well as exhibit No. 2188, page 15,674.

6 However, there is nothing in exhibit No.
7 2188, page 15,674, which supports the prosecution's
8 allegation.

9 According to a note of Foreign Minister
10 HIROTA addressed to the British Ambassador as well
11 as a declaration of Britain which was handed over to
12 Mr. HIROTA¹⁰ the shelling of the Ladybird happened
13 in the early morning of December 12. The shelling
14 of the Panay happened, according to the investigation
15 report of the U. S. Navy, about 1338 hours on
16 December 12.¹¹

17 In view of all this, it is quite inconceivable
18 that the Ladybird was shelled and captured while on
19 her way to the rescue of the Panay. There can be no
20 doubt that the Panay Incident took place while the
21 Ladybird was being captured.

22 (2). In its argument against the accused
23 HIROTA the prosecution alleges that "although HIROTA
24

25 (10. Ex. 2527, Tr. 21367-8.
Ex. 2546, Tr. 21540-1.
(11. Ex. 263, Tr. 3521)

1 sent a note to the British Ambassador apologizing for
2 that Incident and stating that it was due to a mistake
3 and that Japan was ready to pay adequate indemnities
4 the excuse, given for those incidents (Ladybird
5 Incident, etc.) and saying they were mere unhappy
6 accidents, as has been shown by the above evidence is
7 to be entirely without ground." It further alleges
8 that HIROTA was undoubtedly aware of the falsehood
9 of his statement.

10 However, many proofs offered in evidence
11 have conclusively shown that the Ladybird Incident
12 was an error caused by thick fog. Reference will
13 again be made to this point in Section 2, Chapter II,
14 Detailed Argument Part.

15 In view of the above facts, it is clear that
16 the prosecution is distorting evidence and that the
17 conclusion it has reached is a mere conjecture.

18 c. The Accused ITAGAKI.

19 (1) In its argument against the accused
20 ITAGAKI the prosecution alleges that what the younger
21 officers were longing for was to occupy Manchuria,
22 to cut it off from China and to keep it for Japan for
23 the purpose of economic utilization and cites as
24 evidence transcript page 1976 and exhibit No. 245,
25 page 3016-7.

1 However, transcript page 1976, which is testi-
2 mony of General TANAKA, Ryukichi, purports that
3 HASHIMOTO said that it would not be advisable to occupy
4 Manchuria. The prosecution's allegation is quite con-
5 trary to the effect of the document. Moreover, that
6 General TANAKA's above-cited statement is not true is
7 obvious from the fact that on that day the accused
8 HASHIMOTO did not meet General TANAKA.¹²

9 Exhibit No. 245, which sets out witness
10 MORISHIMA, Norito's opinions, has nothing to do with
11 the accused HASHIMOTO.

12 Transcript page 23,016-7 is Witness HATTORI,
13 Takushiro's affidavit concerning the Nomonhan Incident.

14 None of the above-cited documents supports
15 the prosecution's allegations. The prosecution is
16 trying to prove facts which are not supported by
17 evidence.

18 (2) In its argument against the accused
19 ITAGAKI the prosecution alleges that later, for the
20 achievement of this purpose (the annexation of Man-
21 churia) ITAGAKI, together with HASHIMOTO, DOHIHARA,
22 KOISO and others, took part in the formulation of a
23 plan to pull down the civilian government and cites
24 exhibit No. 2177-A, page 15,587.

25 (12. Ex. 3194, Tr. 28,788-9
 Ex. 3195, Tr. 28,795)

However, it has already been shown in detail that Exhibit No. 2177-A is a statement which Mr. OKAWA made after he became insane.

The March and the October Incident which were planned by the accused HASHIMOTO were but movements for an internal reform having nothing to do with the accused ITAGAKI.

d. The Accused KOISO.

(1) In its argument against the accused KOISO the prosecution alleges that KOISO denied that he was a member of the Sakurakai.

However, the accused KOISO could not have been a member of the Sakurakai. The Sakurakai was an association, organized in 1930, which consisted of army officers below the rank of lieutenant colonel, whereas the accused KOISO was Major General at that time. Therefore, the prosecution is distorting evidence in alleging that he denied his membership in that association.

(2) In its argument against the accused KOISO the prosecution alleges that according to this scheme (the March Incident) it was planned to appoint

- (13. Ex. 3195, Tr. 28,793, 4, 5
Ex. 3375, Tr. 32,209, 32,213, 32,214
Ex. 2424, Tr. 19,667, 19,668, 30,322
(14. Ex. 3195, Tr. 28,793; Ex. 2424, Tr. 19,666
(15. Ex. 114, Tr. 733)

War Minister UGAKI and to concentrate the political
1 power into the hands of the military and cites as
2 evidence exhibit No. 2177-A, page 15,586 as well as
3 transcript page 32,282-3.

4 However, it has already been shown that
5 exhibit 2177-A is a statement which Mr. OKAWA made
6 after he became insane. Further, in transcript page
7 32,282, the part on which the prosecution relies,
8 the accused KOISO denies the point alleged by the
9 prosecution. Accordingly, here again the prosecution's
10 allegation is wholly untenable.

11 (3) In its argument against the accused
12 KOISO the prosecution alleges that "the planned
13 actions and adopted measures (the March Incident)
14 were . . . the participants . . . to solve the Man-
15 churian problem . . ." and cites transcript page
16 15,578.

17 (4) In its argument against the accused
18 KOISO the prosecution allege that although at first
19 HASHIMOTO had stated on interrogation that KOISO was
20 one of the formulators of the March and the October
21 Incident, he testified later on the witness stand that
22 KOISO was connected with the Incident only insofar
23 as he made efforts to restore the bombs and cites
24 transcript pages 28,807, 15,076-7.
25

1 This means nothing but that HASHIMOTO
2 corrected his former statement which was based on
3 inaccurate recollections.

4 e. The Accused MATSUI.

5 (1) In its argument MM-4 against the accused
6 MATSUI the prosecution refers to the Ladybird Incident.
7 With regard to this point it shall be taken up in
8 Section 2, Chapter II, Detailed Argument Part.

9 (2) In the argument MM-84 against the accused
10 MATSUI the prosecution refers to the Berlin talks.
11 As to this point we have already given an over-all
12 statement in Section 2, a, Chapter IV, General Argu-
13 ment Part. Further details shall be given in Section 2,
14 Chapter III, Detailed Argument Part.

15 f. The Accused MINAMI

16 (1) In its argument against the accused
17 MINAMI the prosecution alleges that MINAMI knew, or
18 ought to have know, that some of the members of the
19 Sakurakai represented the War Ministry and that the
20 object of the Sakurakai consisted in carrying out an
21 internal reform and solving the Manchurian problem.
22 It cites no evidence, however.

23 There was no member in the Sakurakai, who
24 represented the War Ministry. It is therefore natural
25 that the prosecution has failed to find any proof

supporting its allegation. Further, it has been shown
1 that the object of the association did not include
2 solution of the Manchurian problem.

3 Accordingly, it is quite impossible that the
4 accused MINAMI should have known such unreal facts.
5 The prosecution is relying on conjectures and presump-
6 tion.

7 (2) In its argument against the accused
8 MINAMI the prosecution citing exhibit No. 179, page
9 1926, as well as page 2003, alleges as follows:
10 "MINAMI knew, or ought to have known, that during the
11 period from July to October, 1931, a group of army
12 officers, headed by Lieutenant Colonel HASHIMOTO and
13 SHIGETO, gained power; that as a consequence it became
14 so very difficult for the military authorities to con-
15 trol this group that in the formulation of the budget
16 they encountered many obstacles; and that this group,
17 including General TATEKAWA, strongly insisted that
18 Japan could not be one of the biggest powers with suf-
19 ficient national defense capacity, unless she did not
20 secure the possession of Manchuria."
21

22 However, Exhibit No. 179 is the KIDO Diary,
23 which is a strange mixture of tidbits of rumors. In
24 particular, the part cited by the prosecution is the
25 opinion of Mr. HARADA, the so-called information broker,

1 which was recorded by the accused KIDO. This is totally
2 devoid of probative value.

3 Transcript page 2003 is the opinion of General
4 TANAKA, Ryukichi, who is a story-teller as shown before.

5 It is impossible that such unrealities should
6 have been known to HASHIMOTO or the accused MINAMI.
7 The prosecution's allegation is a mere conjecture.

8
9 CHAPTER I

10 MANCHURIAN PROBLEM

11 1. Sakura-Kai (Cherry Blossom Society)

12 The prosecutor presented as the evidence
13 of the accused HASHIMOTO's connection with the Man-
14 churian Incident, the record of the Bureau of Police
15 Affairs of the Home Ministry ^(a) in connection with the
16 Sakura-Kai and testimony of the prosecution witness
17 TANAKA, Ryukichi, with regard to the Sakura-Kai.

18 But Lieutenant Colonel TANAKA, Kiyoshi's
19 report, from which the Home Ministry's Record was
20 taken, is not more than his opinion. For instance,
21 it says in some parts, - - the judgment of the situa-
22 tion by the second section of the Army General Staff
23 in the 5th year of Showa (1930) was beginning to obtain

24
25 (a) Ex. 183, T. 2,188.

1 unprecedented decisions - - they have come to the
2 conclusion that - - it is inevitable that our nation
3 should first be reconstructed - -^(a)."

4 All these are the opinion based on supposition
5 and they are not fact. Therefore they have no proba-
6 tive value.

7 Also the testimony of the prosecution witness
8 TANAKA, Ryukichi, says, "It is said that, according
9 to the story of Captain CHO in Shanghai, the Sakura-Kai
10 acted for the solution of the Manchurian problem and
11 reorganization of the country from immediately after
12 the so-called March Incident." Also he says, "Accord-
13 ing to my subjective view, the center of the plan for
14 the Manchurian Incident in Japan was the members of
15 the so-called Sakura-Kai, and the activity revolved
16 around Lieutenant Colonel HASHIMOTO and Captain CHO,
17 Isamu." All these statements are not facts as they
18 are. The former is hearsay, and the later is a dog-
19 matic opinion. Neither of these has any probative
20 value. Herewith it is necessary to show the character,
21 purpose and activity of the Sakura-Kai. As mentioned
22 in the report of Lieutenant Colonel TANAKA, Kiyoshi,
23 which taken in the Police Affair Bureau of Home Min-
24 istry Record, ". . . decided to establish a research
25 (a) T. 2,191

organization on the internal reorganization of the country. The name Cherry Society was given to this organization. The membership shall be limited to army officers -- with the rank of Lieutenant Colonel or below. . . ."^(a)

There was no constitution nor dues fixed for gathering. Nor was it a secret organization. So it did not conspire to exclude the officers and politicians who were not considered as sufficient aggressors.

The above facts are well testified by the affidavit of the witness WACHI, Takaji, and also by the affidavit of the accused HASHIMOTO.^(b) Accord-^(c) ingly, it never investigated the matters of Manchuria and other countries, and it had nothing to do with the Manchurian Incident and the Kwantung Army. No one of the Kwantung Army joined the meeting. The aforementioned facts are also testified in the affidavit of the witness WACHI, Takaji, and the affidavit of the accused HASHIMOTO.^(d) According to the testimony of the accused ITAGAKI,^(e) he did not know even the existence of the Sakura-Kai in the Kwantung Army to which he was attached at that time. The accused HASHIMOTO testified^(f)

(a) T. 2,189

(b) Ex. 2424, T. 19,666

(c) Ex. 3195, T. 28,793

(d) Ex. 2424

(e) Ex. 3195

(f) T. 30,323

1 in his affidavit that "14. In April 1931 as chief
2 of the Russian Section of the Second Department of the
3 Army General Staff at the meeting for 'Estimation of
4 Situation' I advanced the following opinion, to-wit:
5 That Army General Headquarters should recommend that
6 the government take a firm attitude toward settling the
7 hundreds of pending questions in Manchuria. Other than
8 this, I had nothing to do with the Manchurian Incident
9 or the founding of Manchukuo.^(a)" In reply to the cross-
10 examination of Prosecutor Tavenner, the accused
11 HASHIMOTO answered him, "at that time in Manchuria
12 repeated incidents were breaking out in which there
13 were threats to Japanese lives and property. The Jap-
14 anese residents' right to live and to engage in business
15 was threatened and our railway rights were violated.
16 The Japanese Foreign Office only protested once against
17 all these incidents and took the attitude of trying to
18 settle these incidents on the spot, so that finally
19 these incidents mounted up to total three hundred sev-
20 eral tens. Thereupon I advocated that it was the duty
21 of the General Staff to strongly urge the Government
22 to take a firm line toward the Central Government of
23 China and to carry out the negotiations with a very
24 firm attitude.^(b)
25

(a) Ex. 3195, T. 2,879-5-6

(b) T. 28,809

Major TANAKA, Kiyoshi misunderstood the above
fact.

As the witness WACHI, Takaji testified that
"Mr. TANAKA, Kiyoshi was not an important member of the
(a)
Sakura-Kai" so it should be taken that he entertained
such erroneous thought carelessly.

With regard to valueless testimony of Mr.
TANAKA, Ryukichi I shall state all together later in
the part of Mukden Incident, Section 5, Chapter 1,
Detailed Argument Part.

2. The March Incident.

The prosecutor takes the accused HASHIMOTO
"as the promoter of many conspiracies for the purpose
of eliminating the politicians and the officers not
considered as sufficient aggressors," and he also
takes up the March Incident in order to make him one
of responsible group in the Mukden Incident.

The evidences presented by the prosecution on
(b)
these points are the trial record of Mr. OKAWA, the
(c) (d)
meritorious record of Mr. OKAWA, letters of Mr. OKAWA,
(e)
the gist of argument on OKAWA's case, the testimony
of the prosecution witness SHIMIZU, Konosuke, the

- (a) T. 19,685
- (b) Ex. 2177-A, T. 15,556
- (c) Ex. 2177-B, T. 15,591
- (d) Ex. 163-2, T. 1,610
- (e) Ex. 2231, T. 15,998

record of the Police Affairs Bureau of the Home Minis-
 try, ^(a) and two excerpts of KIDO's Diary. ^(b)

The part related to the accused HASHIMOTO in the trial record of Mr. OKAWA is only in the following nature: Lieutenant Colonel HASHIMOTO, Kingoro "... told me that the upper class of the army was burning with indignation at the Diet and that such a Diet should be crushed. And they ask me to see General UGAKI to find out what his opinion was. Thus it was the plan to advance the first step toward the state reconstruction." ^(c) There is no mention whatsoever about the accused HASHIMOTO in the meritorious record of Mr. OKAWA, ^(d) nor in the letters of Mr. OKAWA, ^(e) and also in the gist of argument on OKAWA's case.

The Police Affairs Bureau of the Home Ministry Record ^(f) as Major TANAKA, Kiyoshi neglected to ascertain the fact, contains the writing of a mistaken opinion. Thus it has no probative value. ^(g)

The mention made in the KIDO Diary is entirely different from facts except HASHIMOTO's participation in the movement to bring about a cabinet change.

(a) Ex. 183

(b) Ex. 179-C & F, T. 1,926-7

(c) T. 15,581

(d) Ex. 2178-B

(e) Ex. 2231

(f) Ex. 183

(g) Ex. 179-C, T. 1,927

(a)

1 In the KIDO Diary it is written that Lieutenant
2 Colonel HASHIMOTO is behind the organization for
3 Manchurian and Mongolian problems research activated
4 by a group captains. However, the accused HASHIMOTO
5 (b)
6 testifies in his affidavit:

7 "I did not form any research group on Manchu-
8 Mongolia issues nor did I join or back incognito any
9 such group. I have never even heard of the existence
10 of such a group." Still more, this part of the KIDO
11 Diary was abused by the accused TOJO as information
12 broker. It is hearsay from Mr. HARADA, Kumao. The
13 other part of the KIDO Diary is hearsay from Mr. AKIMA,
14 Rainei, one of his group members. Every one of them
15 lacks as an evidence.

16 The testimony of the prosecution witness,
17 Mr. SHIMIZU, Konosuke, contrary to expectation of the
18 prosecutor, is all for advantage of the accused
19 HASHIMOTO.

20 Now, it is necessary to show the motive, the
21 aim and the result of the March Incident. The March
22 Incident was a pure movement for the state reconstruc-
23 tion, and it had nothing to do with the Manchurian
24 Incident. Concerning the motive and the aim of the
25 March Incident, the prosecution witness, SHIMIZU, Konosuke

(a) Ex. 179-F, T. 1,928

(b) T. 28,793

1 testified that ". . . it was a pure movement for the
2 state reconstruction to push up statesmen of high
3 character to relieve the people who were in distress
4 as the political parties were corrupted and their poli-
5 tics in complicity with zaibatsu. It is a fact that
6 aggressive character was not included in the March
7 Incident; -- It purely aimed at internal reform."^(a)

8 Also the prosecution witness, Mr. TOKUGAWA,
9 Yoshichika testified that ". . . at that time the in-
10 ter al situation in Japan was such that two political
11 parties were bitterly contesting and thereby the people
12 were suffering very much, and the main topic of dis-
13 cussion was how it would be good if really enlightened
14 politics can be carried out . . ."^(b)

15 The accused HASHIMOTO testified in his affi-
16 davit that ". . . I participated in the so-called March
17 Incident plotted by Dr. OKAWA, Shumei, with the aim to
18 organize a cabinet headed by General UGAKI, Kazushige,
19 for the cause of national reform, but the plan was not
20 realized because of the General's disapproval. . . The
21 incident was not linked with the Manchurian Incident.
22 (c)

23 Mr. OKAWA once told me that he had a plan to make Gen-
24 eral UGAKI Prime Minister and through him to carry out

- 25 (a) T. 1,421-3
(b) T. 1,447
(c) T. 28,793-4

the renovation of the corrupted political parties; and
1 to this proposition I said, 'Yes, I am in complete
2 agreement with your views'. . ."^(a)

3 The accused KOISO testified in his affidavit
4 that: ". . .Dr. OKAWA and his followers resented cor-
5 rupt party politics and wanted to reform the internal
6 political system by giving birth to a cabinet under the
7 premiership of General UGAKI, who was then the War
8 Minister. Dr. OKAWA wanted General UGAKI to take an
9 active post . . . This was the so-called March Inci-
10 dent, and had no relation with the Manchurian Incident
11 to my knowledge."^(b)

12 Also the prosecution witness, UGAKI, Kazushige
13 was asked the following question: "May I understand
14 that the March Incident was a purely internal affair
15 and had no international meaning?" To this he answered:
16 "As you say, I believe that this Incident has nothing
17 whatsoever related with the affairs outside of the
18 country."^(c)
19

20 The witness Mr, WACHI, Takaji testified in
21 his affidavit that: "13. HASHIMOTO, Kingoro said
22 that the March Incident was a move which attempted to
23 form a cabinet under the leadership of General UGAKI,

24 (a) T. 28,810
25 (b) T. 32,209
(c) T. 1,627-8

1 Issei and to eliminate the corrupted politicians from
 2 the political parties."^(a)

3 The witness ISHIHARA, Kanji testified in his
 4 affidavit that "none of these officers had any connec-
 5 tion with the so-called March Incident . . . I had no
 6 opportunity to have intimate talks with Colonel
 7 HASHIMOTO, Kingoro or Dr. OKAWA, Shumei before the
 8 Manchurian Incident."^(b)

9 The accused ITAGAKI testified that: "I had
 10 absolutely no relation with the Manchurian Incident. . ."^(c)
 11 ". . . But the plan (March Incident) was not realized
 12 because of General's (UGAKI) disapproval."^(d) This
 13 fact is clearly mentioned in the affidavit of the ac-
 14 cused HASHIMOTO,^(e) in the affidavit of the witness Mr.
 15 WACHI, Takaji,^(f) and also in the affidavit of the
 16 accused KOISO.^(g)

21
 22 (a) T. 19,668

23 (b) T. 22,116

24 (c) T. 30,323

25 (d) T. 28,794

(e) T. 28,793-4

(f) Ex. 2424, T. 19,668

(g) Ex. 3375, T. 32,209

Mr. OKAWA, Shumei stated in his trial record
1 as follows: "This Manchurian Problem was the important
2 motive for the March Incident."^(a) By the evidences
3 enumerated above, the motive and the aim of the March
4 Incident are too obvious.

5 The personal opinion of Mr. OKAWA has no
6 relation whatsoever with the accused HASHIMOTO.

7 Furthermore, several years after the March
8 Incident Mr. OKAWA was tried for the May 15 Incident.
9 In spite of the fact that at the time of the March
10 Incident he did not say it had relation with the
11 Manchurian Incident, it is obvious, based on his
12 exaggeration, to make the May 15 Incident significant
13 by using such words first time at the trial held
14 after several years. Also in the next chapter ex-
15 plaining the October Incident we shall show that the
16 opinion of Mr. OKAWA was stated after his derangement
17 of mind.
18

19 Thus, by the aforementioned evidence, it is
20 clear and obvious that the March Incident was not
21 "an activity to eliminate the politicians and the
22 officers not considered as sufficient aggressors,"
23 and also it had no relation whatsoever with the
24 Manchurian Incident.
25

(a. Tr. 15,578.

3. The October Incident.

The Prosecution treats the so-called October Incident in the same manner as in the case of the March Incident. As evidence for it, the Prosecution cites the trial record of Mr. OKAWA^(a), the merit record of Mr. OKAWA^(b), the Police Affairs Bureau, Home Ministry record,^(c) the gist of argument on Mr. OKAWA case and the testimony of the witness TANAKA Ryukichi. However, nothing is mentioned about the so-called October Incident in the merit record of Mr. OKAWA, the Police Affairs Bureau, Home Ministry record, nor in the gist of argument on the OKAWA Case.

If we look up the trial record of Mr. OKAWA, he states, among others, that "the cause of the October Incident is related to the Manchurian Incident and was started by destruction of the S.M.R. line at Lukew-Chiao on September 18, 1931. The cabinet at that time, as you know was the SHIDEHARA Interim Cabinet" ^(d) He further states that ". . . General ARAKI was not involved in the October Incident."

It is a well known fact in this Court that Mr. OKAWA is confined in a lunatic asylum on account

- (a. Ex. 2177-A.
- b. Ex. 2178
- c. Ex. 183
- d. Ex. 2177-A)

1 of his insanity. It can be clearly seen that his
2 mind was already affected when he made this statement.
3 Because the Second HAMAGUCHI Cabinet came into being
4 after the Provisional SHIDEHARA Interim Cabinet. It
5 was very well known fact even among the common
6 Japanese that after the fall of the Second HAMAGUCHI
7 Cabinet, the WAKATSUKI Cabinet was formed on April 14,
8 1931, and the Mukden Incident happened during the
9 existence of this Cabinet. Not only this, the October
10 Incident intended to have Lieutenant General ARAKI, a
11 man of high character, for its leader. On the con-
12 trary, the movement was stopped by his persuasion.
13 Thus, it is not possible to say definitely that General
14 ARAKI had no relation with the Incident in that sense.
15 There is no other way than to say that as long as
16 such clear facts are mistaken, Mr. OKAWA's statement
17 is a biased statement of a man of unbalanced mind.
18 Also, as he had no relation with the October Incident,
19 he had no way to be acquainted with the real situation.
20 He pretended to have known it. This is also a mani-
21 festation of his megalomania.

22
23 Thus this trial record of Mr. OKAWA utterly
24 lacks probative value as evidence for conviction.

25 We shall dwell more fully later at the
place of the Mukden Incident in Section 5, Chapter 1,

Detailed Argument Parts to show that the testimony of
1 the witness TANAKA, Ryukichi is a series of falsehoods.

2 Now it is necessary to show the motive, object,
3 and result of the October Incident. The October
4 Incident was a pure movement for an internal recon-
5 struction, and it had no relation whatsoever with the
6 Manchurian Incident. The accused HASHIMOTO testified
7 in his affidavit: "I thought up the so-called October
8 Incident in October 1931 to bring about a cabinet
9 headed by Lieutenant General ARAKI for the purpose
10 of national reform and urged him to accept. But, on
11 the contrary, he severely reprimanded me and at the
12 order of War Minister MINAMI I was arrested by the
13 Military Police. After 25 days heavy confinement I
14 was relegated to the position of a regimental officer
15 of the Himeji Regiment. This incident had no connec-
16 tion whatsoever with the Manchurian Incident. It was
17 first thought out in the course of a conversation with
18 Captain CHO, Isamu in the beginning of the same year
19 after he returned to Tokyo from Peking. It never
20 materialized. No civilians joined the October In-
21 cident. . . ."
22 (a)
23

24 In reply to an interrogation of Prosecutor
25 Tavenner, HASHIMOTO stated that ". . . In the March
(a, Tr. 28795)

1 Incident OKAWA and I were co-conspirators. However,
2 I began to feel that if civilians were let in on plots
3 such as these matters were always apt to leak out some-
4 where or another and that it would become very difficult
5 to carry out such a plot, and therefore we came to the
6 decision not to let any civilians at all in our
7 plans. . . ."^(a)

8 The witness Mr. WACHI, Takaji who was punished
9 as one of the participators of the October Incident
10 together with the accused HASHIMOTO testified in his
11 affidavit as follows: ". . . I was reprimanded along
12 with HASHIMOTO, Kingoro and others on the charge of
13 the October Incident. HASHIMOTO was subjected to heavy
14 disciplinary confinement for twenty-five days and
15 relegated to the Himeji regiment. The aim of the
16 October Incident was to remove corrupt politicians
17 from the political parties and to recommend Lieutenant
18 General ARAKI, a man of unimpeachable character, to
19 head a new government. . . MINAMI ordered the military
20 police to arrest us so that further development of the
21 Incident was checked there. Consequently, the concrete
22 and practical method of its execution had not as yet
23 been considered. . . The motive of the October Incident
24 was based on the fact that both of the political
25
(a) Tr. 28,815)

1 parties Seiyukai and Minseitō, were absorbed in party
2 interests as well as self-interests and never thought
3 of the hardship of the people. For these reasons, it
4 was a move to exclude Premier WAKATSUKI, Reijiro, who
5 was a typical example of the corrupt party politicians,
6 and there was no connection whatever with the Manchurian
7 Incident." (a)

8 Also the accused ARAKI testified in his
9 affidavit that: "On the occasion of the October Inci-
10 dent, I happened to have been asked by War Minister
11 MINAMI and Chief of General Staff KANAYA to subdue
12 the trouble." (b)

13 The accused MINAMI testified in his affidavit
14 that "... I was informed in the middle of October
15 that there were indications of possible disorder among
16 young officers at home. I had these elements immedi-
17 ately apprehended by the Gendarmerie and had the matter
18 properly dealt with." (c)

19 Furthermore, the accused KOISO testified in
20 his affidavit that "From what I learned in the course
21 of the disposal of the incident as part of my official
22 duty, it was the plan in October 1931 some young officers
23 of the General Staff, to effect a renovation of the
24

25 (a. Tr. 19,667-8
b. Tr. 28,126
c. Tr. 19,790)

1 domestic organization of Japan. Before the plan took
2 any concrete shape, being still in the stage of
3 occasional conferences, . . . The Minister of War
4 requested TOYAMA, Commander of the Gendarmerie, to
5 take measures to confine immediately and hold in-
6 communicado all the young officers concerned, who
7 were then confronted with their indiscretions, and
8 told to disband and discontinue such activity. This
9 put an end to the incident."^(a)

10 The prosecution witness Mr. WAKATSUKI,
11 Reijiro to the following prosecution's question gave
12 the following answer:

13 "Q Does the witness recall that War Minister
14 MINAMI had ordered the Kempei-Tai or gendarmery to
15 arrest younger officers in the middle of October?
16 ^(b)

17 "A I have heard of this story."

18 Also the witness Mr. ISHIHARA, Kanji testi-
19 fied in his affidavit and says that, ". . . when the
20 so-called 'October Incident' took place . . . the
21 forces in the field which were quietly striving to
22 do their duties. . . ." ^(c)

23 The accused ITAGAKI
24 testified that he had absolutely no connection with

25 (a. Tr. 32,213-4
b. Tr. 1,567
c. Tr. 22,117)

(a)

the October Incident.

1 By the above evidences, the October Incident
2 was not a mischievous movement for the purpose of
3 eliminating the politicians and the officers not
4 considered as sufficiently aggressive. It is clear
5 that it had no relation whatsoever with the Mukden
6 Incident.

7 4. The 15th May Incident and Others.

8 After 1932, a number of domestic reform
9 movements were conducted in Japan. Some of them are
10 namely the 15th May, the "Ketsumeidan", and the
11 "Shinpoitai", and the 26th February Incidents.
12

13 The Defendant HASHIMOTO has no connection
14 with any of these Incidents. The prosecution does
15 not clarify that the Defendant HASHIMOTO has any con-
16 nection with the said Incidents, nor does it give
17 any evidence to show that the Incidents bear any
18 relationship with the March Incident or the October
19 Incident.

20 So there is no evidence produced as to the
21 Defendant HASHIMOTO being the promoter of many schemes
22 for the exclusion of statesmen and officers not
23 regarded as sufficiently aggressive.
24

25 (a. Tr. 30,323)

5. The Mukden Incident.

Thinking that the Mukden Incident was planned and conducted by Japan, the prosecution considers the defendant HASHIMOTO as being among the conspiracies and cites the following evidences, namely, Trial Record of OKAWA, ^(a) The Investigation of the Special Contribution of Dr. Suma TOKAWA, ^(b) The summary of Argument at the Court for OKAWA, ^(c) the Police Affairs Bureau of the Home Ministry Record, ^(d) the KIDO's Diary, ^(e) the testimonies of prosecution witnesses TANAKA, Ryukichi and FUJITA, Isamu, and the account of the defendant HASHIMOTO's decoration. However, no concrete evidence of any description has been given by the prosecution as to how the defendant HASHIMOTO is related with the Mukden Incident.

Needless to say, the Mukden Incident originated in the blowing up of the South Manchuria Railway lines by the Regular Chinese Army. Then it was followed by exercising our right for self-defense, which was chiefly intended to protect the Japanese residents.

- (a. Ex. 2,177-A
- b. Ex. 2,178-B
- c. Ex. 2,231
- d. Ex. 183, Tr. 2,188
- e. Ex. 179-C & F)

1 This fact is fully shown in a part of the
2 Lytton Report titled the "Description of Several
3 Incidents which occurred on and after 18 September,
4 1931," which concludes: "The commission does not ex-
5 clude the hypothesis that the officers on the spot
6 may have thought they were acting in self-defense." (a)
7 So no further explanation may be needed. That fact
8 is also supported by testimonies of the witnesses
9 SHIMAMOTO, Masaichi, (b) and HIRATA, Yukihiro. (c)

10 Witness KATAKURA, Tadashi, who was at that
11 time a staff officer of the Kwantung Army, testified:
12 "Inquiry commission, General HONJO first said that
13 the doings of the Kwantung Army, had been by the ex-
14 ercise of right to self-defense."

15 As for the responsibility for the military
16 operations conducted at the time of the Mukden
17 Incident, HONJO, Shigeru, then Commander of the
18 Kwantung Army, clarified a point who should be respon-
19 sible for those operations, and said in his testimony:
20 "The railway explosion at the height of the anti-
21 Japanese movement led to the Manchurian Incident and
22 the Kwantung Army had no choice except to take action
23 from the standpoint of self-defense. No instructions
24

25 (a. Tr. 1,798
b. Tr. 19,481
c. Tr. 19284-5)

1 of any sort were received from the Government or
2 Military High Command. In leaving this world bearing
3 fully responsibility, I, hereby. . ."^(a) Witness
4 ISHIWARA, Kanji, who was with General HONJO when he
5 made his testament, testifies in his affidavit: "When
6 I expressed my opinion as the operational officer to
7 General HONJO to that effect, he mediated a few
8 minutes with his eyes closed, and then, judging from
9 the general situation, he made a final decision,
10 saying resolutely, 'Yes, let it be done on my own
11 responsibility'. . ."^(b)

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23 (a. Tr. 19,246
24 b. Tr. 22,119)
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1 Nothing has been produced by the prosecution
 2 strong enough to rebut these clear evidences on the
 3 point. The trial court record of OKAWA, ^{b.} as
 4 previously described, presents an eccentric view
 5 which was and is characteristic of OKAWA. Neither
 6 the investigation on OKAWA's distinguished services
 7 nor the Summary of Argument at the Court of Appeals
 8 of OKAWA ^(c) gives anything in relation to the
 9 defendant HASHIMOTO.

10 It has already been mentioned that the
 11 Police Affairs Bureau of the Home Ministry record ^{d.}
 12 is nothing but a copy of the false view given by
 13 Major TANAKA, Kiyoshi, and that the KIDO's Diary ^{e.}
 14 also is based on groundless hearsay. In addition,
 15 these exhibits state nothing whatever about the
 16 Mukden Incident.

17 According to the prosecution witness FUJITA,
 18 Isamu, there shows no existence of any relations
 19 between the Mukden Incident and the defendant
 20 HASHIMOTO. ^{f.}

21 The testimony of prosecution witness TANAKA,
 22 Ryukichi, is completely false. He was in Shanghai at
 23

24 b. Ex. 2177-A. c. Ex. 183
 25 c. Ex. 2231. c. Ex. 179-C & F.

1 the time of the Mukden Incident. Therefore, his
2 testimony is nothing but mere hearsay. Moreover,
3 he said that he got information from TATEKAWA,
4 Yoshiji, and CHO, Isamu, both of whom are dead now,
5 and from OKAWA, Shumei, who has gone mad long after
6 the incident. At the time of the Mukden Incident,
7 CHO was in Peiping, not in Manchuria or in Tokyo.
8 This fact is testified in the affidavit of the
9 defendant HASHIMOTO.^a So, CHO cannot have been
10 informed of the real state of the Mukden Incident.
11 TANAKA may have figured that his false testimony
12 would not be uncovered if his information was from
13 dead or insane person.

14 Now, let us further show that witness
15 TANAKA, Ryukichi gave completely false testimony.

16 Prosecution witness TANAKA, Ryukichi testi-
17 fied: "At dinner meeting, sponsored by SUZUKI,
18 Takashi at the "Akebono" restaurant one day in
19 September, 1934, I was told by the defendant
20 HASHIMOTO that he had something to do with the
21 Manchurian Incident." The fact, however, is that
22 no other meeting sponsored by SUZUKI, Takashi for
23 a farewell party in honor of Major General TOJO was
24 ever held at the "Akebono" restaurant. The affidavits
25 T. 28795.

of defendant HASHIMOTO^{a.} and witness SUZUKI, Takeshi,^{b.}
 clearly show that HASHIMOTO did not attend this party.
 It is quite impossible for those who have never met
 each other to have a talk with each other. These
 show that the testimony of witness TANAKA, Ryukichi,
 was entirely false.

In addition, the fact that TANAKA, Ryukichi,
 is a liar is clearly shown in the respective testi-
 monies of defendants MINAMI,^{c.} ITAGAKI,^{d.} and the
 affidavits of witnesses KOISO^{e.} and MUTO,^{f.} and also
 in the several affidavits of witnesses KAWABE, Koshiro,^{g.}
 NINOMIYA, Yoshiharu,^{h.} OTSUKI, Akira,^{i.} and HARA,
 Shiro.^{j.} So great is the number of other evidences
 that they could not be mentioned here.

It can hardly be imagined that the Court
 may be blinded by such false statements of TANAKA.

As to the fact that the defendant HASHIMOTO
 was decorated, it is out of the question. If the
 defendant HASHIMOTO had had anything to do with the
 Manchurian Incident or with the founding of Manchukuo,
 he must not have been awarded so low a decoration as
 the Fourth Order of Merit. As early as June 1929,

a. T. 28795.

b. T. 28788, 28789.

c. T. 19877.

d. T. 30324.

e. T. 32232.

f. Ex. 3454.

g. T. 32879.

h. T. 34413.

i. T. 34464.

j. T. 34453.

1 the fourth class of the Order of the Sacred Treasure
2 was conferred on him. Five years after that -- namely,
3 in April, 1934, he was given the fourth class of the
4 Order of the Rising Sun. This shows that he was
5 decorated, not in consideration of his distinguished
6 service, but only in acknowledgment of his service
7 in serving at the remote part of Manchuria. With
8 regard to this respect HASHIMOTO himself gave a testi-
9 mony saying: "I received the medal because I went to
10 Manchuria as a member of the garrison there."^{a.} It
11 has now clearly been shown by the foregoing evidences
12 that the defendant HASHIMOTO did not have any connec-
13 tion whatever with the Mukden Incident.

14 6. Foundation of Manchukuo and others.

15 No evidence has been given by the prosecu-
16 tion concerning the doings of the defendant HASHIMOTO
17 during the period between the outbreak of the Man-
18 churian Incident and that of the Marco Polo Bridge
19 Incident of 1937.

20 He had nothing to do with Manchukuo except
21 that he, as officer attached to the HIMEJI regiment
22 was sent to and stayed for a short period in the
23 remote parts of Manchukuo to garrison there.

24
25 ^{a.} T. 28845.

CHAPTER IICHINA1. The Marco Polo Bridge Incident.

The Marco-Polo Bridge Incident could have, by means of diplomacy, been solved easily on the spot. As it was, the Chinese Army made a fierce attack on Fengtai at the very moment when the solution would have otherwise been made most easily. Consequently, the incident spread to such an extent that its solution became impossible to be realized. This fact was frankly admitted by General Chin Te-chun of the Chinese Army when he was called as witness. So no additional explanation may be needed concerning this respect.

The defendant HASHIMOTO bears no relations with the said incident, for he was at that time living in Tokyo as a simple ordinary civilian out of active service. This is clearly discernible in his personal history^{b.} and his affidavit.^{c.}

- a. T. 2459.
b. Ex. 105.
c. Ex. 3195, T. 28796.

1 In addition, General Chin Te-chun testified
2 that HASHIMOTO, Gun was the Chief of the Staff of
3 the Japanese Army at the time of the Marco Polo
4 Bridge Incident,^{a.} and that Consul HASHIMOTO was a
5 different man from the defendant HASHIMOTO.^{b.} This
6 testimony is supported by witness HASHIMOTO, Gun,
7 in his affidavit.^{c.}

8 As far as the Marco Polo Bridge Incident is
9 concerned, the defendant HASHIMOTO was really taken
10 for another person. This mistake has now been clari-
11 fied.

12 2. The "Ladybird" Incident.

13 The firing of the "Ladybird" was an acci-
14 dental case due to the dense fog. The Japanese
15 Government and the Japanese Commander made a due
16 apology and compensation, which were accepted by the
17 British Government and the British Commander. Then
18 it was settled completely. Investigation made by
19 the Japanese Government ascertained that the defendant
20 HASHIMOTO was not in the least responsible for the
21 incident.
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25 a. T. 2464.

b. T. 2464-5 and T. 2517.

c. T. 20611-36.

1 During the rebuttal stage the prosecution
2 produced an excerpt from the interrogation of accused
3 HASHIMOTO, which was marked as the exhibit 3846, to
4 show the shelling of the Ladybird was not the acci-
5 dent. However, the said exhibit reads, ". . . I
6 immediately started shelling them. . . The white
7 ship came towards our position and it turned out to
8 be the British gun boat 'Ladybird.'" In other words,
9 after the shelling HASHIMOTO found out for the first
10 time it was the British ship as it came near to him.
11 The said exhibit itself clearly shows that the
12 shelling of the "Ladybird" was the accident.
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A. Errors in Point of Fact.

1 As documental evidences for the defendant
2 HASHIMOTO's guilt concerning the "Ladybird" Incident,
3 the prosecution has given the note of the British
4 Ambassador,^{a.} the inquiry report of the U. S. Navy
5 Department,^{b.} the interrogatory of the defendant
6 HASHIMOTO,^{c.} and the fact that HASHIMOTO was deco-
7 rated.
8

9 And moreover, Prosecutor Carr, in reply
10 to our motion for dismissal, submitted prosecution
11 document No. 0001, in which it is stated that the
12 U. S. S. Panay was sunk by the Japanese Army on the
13 Yangtze River on 12 December, when she was engaged
14 in protecting nationals and maintaining communica-
15 tion between Nanking and Hankow. The document adds
16 that the Panay survivors were picked up by the
17 "Ladybird," which was afterwards fired on and sunk
18 by the artillery corps under HASHIMOTO's command.
19 For evidence the inquiry report of the U. S. Navy
20 Department is cited.^{d.}
21

22 The prosecution alleges that the artillery
23 corps under command of the defendant HASHIMOTO sank
24 the "Ladybird" which had saved the Panay survivors.
25 This allegation has two mistakes in it -- one is the
a. Ex. 954-C; b. Ex. 263; c. Ex. 258. d. Ex. 263.

1 "Ladybird" saving of the Panay survivors, and the
2 other the sinking of the Ladybird owing to the firing.

3 It is now necessary for us to look into the
4 inquiry report of the U. S. Navy Department, which
5 may be summed up as follows:

6 At about 1338, several bombs released by
7 Japanese planes struck the U. S. S. Panay. After
8 some fifty hours ashore, during which time the
9 entire party suffered much hardships and exposure,
10 somewhat mitigated by the kindly assistance of the
11 Chinese, they returned and boarded the U. S. S.
12 OAHU and H. M. S. Ladybird.

13 The time referred to leads to the supposi-
14 tion that the Panay crew members boarding of the
15 Ladybird took place after 1500 hours on 14 December.
16 However, the fact that the shelling of the Ladybird
17 took place early on the morning of 12 December is
18 clearly shown both in the note delivered by Foreign
19 Minister HIROTA to the British Ambassador^{a.} and the
20 British statement given to Foreign Minister HIROTA.^{b.}
21

22 It follows therefore that the Panay had not
23 been sunk at the time the HASHIMOTO corps fired upon
24 the Ladybird, by mistake, and that, consequently,

25 a. Ex. 2527.

b. Ex. 2546.

the Panay crew cannot have boarded the Ladybird.

As to the other mistake concerning the sinking of the Ladybird, any description that "the Ladybird was sunk" is nowhere to be found in the said inquiry report.

Of the evidences submitted by prosecution and defense, those concerning the Ladybird Incident, all show that one shell or two struck the ship and yet did very little damage, and that the ship was not sunk by the firing.

Investigations made by the prosecution are thoroughly careless. What is more, the prosecution is so inadvertent that, by reversing the time, it is trying to lay the guilt on the defendant, saying as if the ship had been sunk.

In the British Ambassador's note^a submitted by the prosecution in order to show the defendant's guilt, it is stated that: Colonel HASHIMOTO, the senior Japanese military officer then at WUKU,^b said that firing on warships was due to a mistake.

a. Ex. 954-C, T. 9451-5.
b. T. 9452.

1 "His Majesty's Government have now been
2 glad to receive your Excellency's note -- of the
3 Imperial Government for the attacks on His Majesty's
4 Ships, stating that measures were immediately taken
5 to prevent the recurrence of such incidents and
6 adding that they will deal suitably with those
7 responsible and pay the necessary compensation." ^{a.}
8 This clarifies that firing was due to a mistake,
9 that the Japanese Government tendered an apology,
10 and that the British Government were satisfied
11 with the promises made by the Japanese Government
12 concerning the punishment of those responsible and
13 the payment of the compensation. It says nothing
14 in disfavor of the defendant HASHIMOTO.

15 In the interrogatory of the defendant
16 HASHIMOTO is stated, "This was orders from Lieutenant
17 General YANAGAWA," ^{b.} which shows that the firing
18 was made, not at the discretion of the defendant
19 HASHIMOTO himself but in accordance with orders
20 given him by his superior. Nor does this testify
21 anything in disfavor of the defendant HASHIMOTO
22 either.
23
24

25 a. T. 9453.

b. Ex. 258, T. 3466.

1 We shall next say something about the fact
2 that the defendant HASHIMOTO was decorated. It was
3 because HASHIMOTO distinguished himself very much
4 on the battlefields in Northern China and Central
5 China from August 1937 to April 1939 that he was
6 decorated with the fourth-class Order of the Golden
7 Kite. The Order of the Golden Kite was to be awarded
8 those who had won fame on the battlefield, not those
9 who had made any kind of mistake. His decoration,
10 therefore, has nothing to do with the firing of the
11 Ladybird.

12 It is fit that some more clarification
13 should be made concerning the Ladybird Incident.

14 It was Commander of the Army YANAGAWA,
15 Heisuke, that gave orders to fire upon ships carry-
16 ing remnants of the Chinese Army.^{a.} To the regret
17 of us, his death had made it impossible for us to
18 summon him as witness.^{b.}

19 Upon receiving orders to shell the retreating
20 ships, the HASHIMOTO corps, owing to the dense fog,
21

22
23
24
25 a. Ex. 258, T. 3466.
b. T. 28798.

1 characteristic of the Yangtze River, could not dis-
2 tinguish the British gun boat from other Chinese
3 vessels carrying their retreating soldiers, and
4 because of this, made a mistake in firing upon it.

5 There are countless evidences to show what
6 the said orders were and how the firing was done by
7 mistake, some of which are the affidavit of witness
8 OBATA, Minoru,^{a.} the affidavit of witness NAKAYAMA,
9 Yasuhito,^{b.} the affidavit of defendant MATSUI,^{c.} the
10 affidavit of defendant HASHIMOTO,^{d.} the testimony
11 of defendant HASHIMOTO,^{e.} and an excerpt from the
12 book titled "The Inevitability of Renovation" written
13 by the defendant HASHIMOTO.^{f.}

14 B. Responsibility for the Shelling.

15 We now cite evidences, showing that the
16 defendant HASHIMOTO had no responsibility for the
17 shelling, on the following points, namely, both the
18 Japanese Government and the Commander-in-Chief of
19 the Japanese Army apologized to the British Government
20

- 21
22
23 a. Ex. 3192.
24 b. Ex. 2577.
25 c. Ex. 3498.
d. Ex. 3195.
e. T. 28849.
f. Ex. 264, p. 3532.

1 as well as to the Commander-in-Chief of the British
2 Navy for the incident mentioned above, that the
3 Japanese Government compensated the British Govern-
4 ment for the loss from the incident^{a.} and the satis-
5 faction being expressed by the British Government, the
6 incident was brought to a complete settlement.

7 The witness NAKAYAMA, Yasuto, states in
8 his affidavit^{b.} as follows:

9 ". . . I reported the results of my inves-
10 tigations as above to General TSUKADA, the Chief of
11 the Staff, and then to General MATSUI. General
12 MATSUI ordered TSUKADA, the Chief of Staff, to trans-
13 mit his message to the Commander of the 10th Army
14 that apology should be immediately made to the Chief
15 of the British Navy, and I heard about this matter
16 beside him. Then I heard that General MATSUI, imme-
17 diately after returning to Shanghai from Nanking, met
18 Admiral Little of Britain, to whom he expressed
19 feelings of his great regret, and that the Admiral
20 came to understand this matter and promised him to
21 convey General MATSUI's apology to the British Govern-
22 ment."^{c.}

23 a. Ex. 264.

24 b. T. 21911.

25 c. T. 21911.

1 The defendant MATSUI states in his
2 a.
3 affidavit as follows:

4 ". . . I received a report that some
5 artillery unit belonging to the 10th Army bombarded
6 a British gun boat in the neighborhood of Wuhu, I
7 ordered my Chief of Staff to investigate it immediately --

8 "I immediately ordered the Commander of the
9 10th Army to tender his apology accordingly to the
10 British Naval Commander-in-Chief there. I, myself,
11 returned to Shanghai from Nanking, called on Admiral
12 Little of the British Navy without delay and apologized
13 to him for the incident. He fully understood
14 my intention and promised me that he would transmit
15 my apology to his government. . ." b.

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25 a. Ex. 3498.
b. T. 33833-4.

were carrying retreating Chinese soldiers. Unfortunately,
1 on that occasion the British Gunboat Ladybird which
2 was among the Chinese ships was struck and an incident
3 was created. But the fact that the shooting was by
4 mistake due to the dense fog which made me take it for
5 a Chinese ship was brought to light and I was set free
6 from any responsibility." (a)

The British note delivered by Sir Robert
8 Craigie to the Foreign Minister on the 31st of Decem-
9 ber, 1937, reads as follows: (b)

"Your Excellency, I have the honor on
11 instructions from His Majesty's Government in the United
12 Kingdom to inform Your Excellency that they have noted
13 with appreciation the assurances contained in Your
14 Excellency's note of December 28 in connection with the
15 attacks on British warships and merchant vessels on
16 December 12, and have learned with satisfaction that
17 the statements contained in your note of December 14
18 apply to merchant vessels concerned as well as to
19 warships.
20

"His Majesty's Government note however with
22 satisfaction that the Japanese Government have taken
23 or are prepared to take the necessary measures to deal
24

25 a. Tr. 28,796.
b. Ex. 2546.

1 suitably with the officers responsible for these inci-
2 dents and to prevent any repetition..." (a)

3 The certified statement from the United Kingdom
4 Liaison Mission in Japan, British Embassy, Tokyo, reads
5 as follows: (b)

6 "His Majesty's ship Ladybird was damaged by
7 Japanese artillery fire at Wuhu on December 12, 1937.
8 Damage was originally assessed at 3,830 pounds but
9 this was later reduced to 2,942 pounds. A claim for
10 2,942 pounds was presented to the Japanese Government
11 on August 18, 1938, and a cheque for this amount was
12 paid to His Majesty's Ambassador, Tokyo, on August 31,
13 1938..." (c)

14 Through the above-mentioned facts it is clear
15 that the defendant HASHIMOTO had no responsibility for
16 the Ladybird Incident.

17 3. Atrocities in Nanking, Kwantung, Hankow,
18 etc.

19 The prosecution alleges that "the defendant
20 HASHIMOTO participated as one of the leaders, organizers,
21 instigators, or accomplices in the formation or execution
22 of a common plan or conspiracy as to murder and that
23 he, by unlawfully ordering, causing and permitting the
24 armed forces of Japan to attack the cities of Nanking,
25

a. Tr. 21,540-1.

c. Tr. 21,371.

b. Ex. 2528.

1 Kwantung and Hankow in breach of the articles of the
2 treaties with China and to slaughter the inhabitants
3 contrary to international law, unlawfully killed large
4 numbers of them." But no evidence relating to this
5 has so far been adduced by the prosecution.

6 As for this point, the defendant HASHIMOTO
7 states in his affidavit as follows: (a)

8 "Neither I nor the forces under my command
9 have ever been at Nanking, Hankow or Canton. I have
10 neither ill-treated POW's, nor committed inhuman acts
11 against any persons. Neither have I permitted others
12 under my authority to do such acts. I have never been
13 in a position wherein I could have performed such
14 acts." (b)

15 The witness OBATA, Minoru, states in his
16 affidavit as follows: (c)

17 "The HASHIMOTO Force was stopped at Wuhu, 14
18 or 15 ri (about 37 miles) from Nanking. Shortly after
19 the fall of Nanking this force was ordered to advance
20 to Hangchow and therefore never participated in the
21 attack on Nanking nor did it enter into the city or
22 its vicinity."
23

24 "The HASHIMOTO force did not attack Hankow

- 25 a. Ex. 3195.
b. Tr. 28,796-7.
c. Ex. 3192.

1 nor did it enter Hankow or its vicinity.

2 "The HASHIMOTO force did not attack Canton
3 (a)
4 nor did it enter Canton or its vicinity."

5 The defendant HASHIMOTO deeply regrets that
6 he was given such disgrace by the prosecution without
7 any evidence.

8 CHAPTER III. SOVIET UNION.

9 1. Caucasus Report.

10 Prosecutor Carr, presuming that the defendant
11 HASHIMOTO had an intention of aggression upon the
12 Soviet Union, states as follows:

13 "Exhibit 734-A shows clearly that HASHIMOTO
14 in 1929 was already advocating of performing obstructive
15 operations to the Soviet Union and occupying the
16 Caucasus by force."

17 But exhibit 734-A is an excerpt from a very
18 small part of exhibit 734, "HASHIMOTO's Report on the
19 Caucasus." The whole meaning cannot be expressed by
20 exhibit 734-A alone. In other words, it is impossible
21 to understand clearly the whole meaning without read-
22 ing the part following exhibit 734-A, that is, exhibit
23 3191, together, which was presented in the individual
24 case of defendant HASHIMOTO. Exhibit 3191 reads as
25 follows:

a. Tr. 28,772.

1 "Now in relation to how advantage can be
2 taken of these countries strategically, the following
3 points should be borne in mind subject to change, of
4 course, with the then existing world situation. We
5 must recognize that England after her expedition into
6 the Caucasus following the Russian revolution, is
7 greatly desirous of holding on to Bakuh's oil. And
8 it is necessary to take advantage of this fact. How-
9 ever, in the event of Russo-Japanese trouble she cannot
10 very well make any movement in the Caucasus against
11 Russia without sufficient reason. But it is possible
12 for England and Japan to jointly act and encourage
13 both Turkey and Persia's craving for territory in the
14 Caucasus and use these two countries as tools to work
15 upon the Musuliman state in the Caucasus.

16 In any event it is most essential to continue
17 to maintain good relations with England in case trouble
18 should arise between Russia and Japan.^(a)
19

20 About this matter, the defendant HASHIMOTO
21 states in his affidavit as follows:^(b)

22 "In September 1927 I was appointed Military
23 Attache to the Japanese Embassy in Turkey and served
24 there till January 1930. During the period -- on

25 a. Tr. 28,765-6.
b. Ex. 3194.

1 15 November 1929 -- I sent to Deputy Chief of Staff
2 OKAMOTO, Renichiro, a report bearing the title of
3 'Situation in the Caucasus and Its Strategic Utiliza-
4 tion.' This report was made in the course of the per-
5 formance of a military attache's routine duty. In
6 this report the phrases subject to change, of course,
7 with the then existing world situation and in case
8 trouble should arise between Russia and Japan appear.
9 These phrases should be interpreted to mean that our
10 attitude has to be altered in accordance with changes
11 in international relations and if, unfortunately, a
12 war should break out between Japan and Russia.

13 "It is obvious not only from this report, but
14 also from an examination of any and all other evidence
15 that I had never plotted, prepared or conspired with
16 others to wage an aggressive war against Russia."^(a)
17

18 It is too strained an interpretation that the
19 prosecution regards this report as being a plan of
20 aggression. There is no probative value in it.

21 2. Berlin Talk.

22 The prosecution are under the misunderstanding
23 that defendant MATSUI called resident military attaches
24 to Berlin and made previous arrangements together with
25 them as to aggression against the Soviet Union.

1 Defendant HASHIMOTO is also observed to have partici-
2 pated in the meeting as above. No evidence in con-
3 nection with this, however, has been adduced yet by
4 the prosecution.

5 Defendant MATSUI states in his affidavit (a) as
6 follows:

7 "Just when I was passing Berlin in April
8 1929, military attaches stationed in various states
9 in Europe, taking the opportunity of my arrival there,
10 got together with the object of renewing friendship.

11 "It was not an official conference and there
12 was no particular purpose. It was presided over by
13 Major General OMURA, Yurin, attache in Berlin, and the
14 meeting was of social nature. It was not a conference
15 called and sponsored by me. Moreover, as I mentioned
16 above, I at that time had already been dismissed from
17 the post of Chief of the 2nd Section, General Staff
18 Headquarters, and, as a mere lieutenant general, I
19 had no official power to sponsor a conference among the
20 attaches of various embassies. In short, it was only
21 a social meeting and nothing was decided upon with
22 regard to the problems of the time, and no particular
23 items were on the agenda. It was merely an informal
24 round-table discussion at which the attaches expressed
25 a. Ex. 3498.

1 their opinions on the situations in Europe. Accordingly,
2 no minutes were taken and I had made no report thereof
3 to my superior after my return to Japan. At the meeting
4 I was seated in the seat of honor only as a visitor
5 who came to that part of the world from afar. On this
6 point, the contents of the prosecution evidence,
7 exhibit No. 733, is contradictory to the statement I
8 made to the prosecution..."^(a)

9 When the defendant MATSUI was asked by the
10 prosecutor, Nolan, "...At this meeting such matters
11 as sabotage and espionage against Russia were discussed,
12 were they not?" to this, MATSUI said, "No, no such
13 things were discussed. Each representative told of
14 the situation in the country in which he was stationed."^(b)

15 The defendant HASHIMOTO states as witness as
16 follows:

17 "...The Military Attache to the Embassy in
18 Berlin sent an invitation to the Military Attaches in
19 Europe saying that since Lt. General MATSUI, the former
20 head of the Second Department of the General Staff
21 Department, was coming to Europe, it would be a good
22 idea to have a discussion meeting at Berlin. I went
23 to Berlin on that invitation. On the morning of the
24

- 25 a. Tr. 33,827-8.
b. Tr. 33,887.

1 following day the discussion meeting was held. Lt.
2 General MATSUI talked to us on the situation in the
3 home island, while we talked to him about the situation
4 in the countries in which we were stationed. That is
5 all that transpired." (a) In answer to the prosecution
6 questions, he further stated in effect that nothing
7 particular took place at that meeting with regard to
8 any war plans or any conspiracy against the Soviet
9 Union. No records or papers or decisions were made
10 at that meeting against the Soviet Union. (b)

11 The above-mentioned matter is beyond controversy.

12 THE PRESIDENT: We will adjourn until half-
13 past nine tomorrow morning.

14 (Whereupon, at 1600, an adjournment
15 was taken until Friday, 19 March 1948, at 0930.)
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25 a. Tr. 28,799, 28,800.
b. Tr. 28,800.